[redacted]

(18,621.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 98.

HUGH STEVENSON, MATILDA C. ALLOWAY, PAUL E. STEVENSON, ET AL., APPELLANTS,

vs.

WILLIAM FAIN, JOHN FAIN, ROBERT FAIN, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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a United States Circuit Court of Appeals, Sixth Circuit.

HUGH STEVENSON ET AL., Appellants,
vs.
WILLIAM FAIN ET AL., Appellees. } No. 987.

Appeal from the circuit court of the United States for the eastern district of Tennessee.

Record.

Original transcript filed June 15, 1901.

Filed Oct. 11, 1901.

FRANK O. LOVELAND, *Clerk.*

1 *Transcript of Record.*

STEVENSON ET AL.
vs.
FAIN ET AL.

It is stipulated in printing record Hugh Stevenson *et al. vs.* Jasper Fain *et al.*, for U. S. sixth circuit court of appeals, the will of W. S. Wetmore need not be printed, and that this stipulation, to wit, that whatever title W. S. Wetmore had passed to complainant, G. P. Wetmore, at death of Wm. S. Wetmore, about 1864, be printed in lieu of said will.

CHARLES SEYMOUR, *Sol.*
SAM'L G. SHIELD,
Sol. for Defendant.

No. 987. Stipulation. Filed Aug. 2, 1901. Frank O. Loveland, clerk.

Cost Bond.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

HUGH STEVENSON, MATILDA G. ALLOWAY, PAUL E. STEVENSON, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochon and Husband, James L. Kernochon, and George P. Wetmore
vs.
WILLIAM FAIN, JOHN FAIN, ROBERT FAIN, JASPER FAIN, ALLEN Fain, Florence Harshaw and Her Husband, Abraham Harshaw.

Know all men by these presents, that we, Hugh Stevenson, Matilda G. Alloway, Paul E. Stevenson, Maxwell Stevenson,
2 by his next friend, Paul E. Stevenson, Eloise Stevenson Kernochon and husband, James L. Kernochon, and George P.

Wetmore, are held and firmly bound unto William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Harshaw and her husband, Abraham Harshaw, in the penal sum of two hundred and fifty dollars, to the payment whereof we bind ourselves, and each of us, and each and every of our several heirs, executors and administrators, jointly and severally, firmly by these presents.

Witness our hands on this 29th day of April, 1899.

The condition of this bond is such that the said Hugh Stevenson, Matilda G. Alloway Paul E. Stevenson, Maxwell Stevenson, by his next friend, Paul E. Stevenson, Eloise Stevenson Kernochon and husband, James L. Kernochan, and G. P. Wetmore, commenced suit against William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Harshaw and her husband, Abraham Harshaw, by bill in equity.

Now, if the said Hugh Stevenson, Matilda G. Alloway, Paul E. Stevenson, Maxwell Stevenson, by his next friend, Paul E. Stevenson, Eloise Stevenson Kernochon and husband, James L. Kernochon, and George P. Wetmore, shall prosecute said suit with effect, or on failure thereof pay and satisfy all costs that may be adjudged against said plaintiff in said cause, or on failure of said defendant if convicted to pay and satisfy said costs; if the said plaintiff shall pay the same, then this bond to be void, otherwise to remain in full force and virtue.

HUGH STEVENSON,
PAUL E. STEVENSON,
ELOISE S. KERNOCHON,
JAMES L. KERNOCHON,
M. C. ALLOWAY,
G. P. WETMORE,
By CHARLES SEYMOUR, *Att'y.*
CHARLES SEYMOUR.

(Endorsed:) Filed April 28, 1899. J. T. Carter, deputy clerk.

3 HUGH STEVENSON, MATILDA G. ALLOWAY, Paul E. Stevenson, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Husband, James L. Kernochan, and George P. Wetmore
vs.
WILLIAM FAIN, JOHN FAIN, ROBERT FAIN, Jasper Fain, Allen Fain, Florence Hosshaw and Her Husband, Abraham Hosshaw.
} In Equity. No. 1153.

To the honorable the judges of the circuit court of the United States in and for the northern division of the eastern district of Tennessee:

Hugh Stevenson, Matilda C. Alloway, Paul E. Stevenson, Maxwell Stevenson, by his next friend, Paul E. Stevenson, Eloise Stevenson

Kornochan and husband, James L. Kernochan, citizens of the State of New York, and inhabitants and residents of the State of New York, and George Peabody Wetmore, a citizen and an inhabitant of the State of Rhode Island, bring this their bill against William Fain, a citizen of the State of Georgia, and resident and inhabitant of the State of Georgia, and John Fain and Robert Fain and Jasper Fain and Allen Fain and Florence Hosshaw and her husband, Abraham Hosshaw, each and all of whom are citizens of the State of North Carolina and residents and inhabitants of the State of North Carolina and of the western district of said State.

And thereupon your orators complain and say that they are the owners in fee of the following described land situate on the waters of Telico river, in Monroe county, Tennessee, to wit: Being all the land on the waters of the Telico river east of the line known as the boundary line between the sixth and seventh ranges of the Ocoee district, Tennessee, which line runs with the magnetic meridian of 1836 approximately north 20 east and south 20 west; at its southerly end running over a mountain peak called Jenks Knob, and at its northerly end striking the divide between the waters of the Telico river in Tennessee and the waters of Cheoah river, North Carolina, at a point close by the Strutton meadow and not far from the house known as the Strutton Meadow cabin. Said land of complainants is bounded on all other sides by the crest of the mountain forming
the divide between the waters of the Telico river on the Ten-
4 nessee side and the waters of the Cheoah river, Snowbird and
other streams on the North Carolina side, which divide is the State line, as the complainants claim, between Tennessee and North Carolina.

Complainants state that they are and have been for more than twenty years in possession of said land and claiming the entire boundary, through various tenants holding under lease for the entire boundary, fields, houses and farming operations conducted thereon.

Complainants further state that their title to said land is derived through duly issued grants from the State of Tennessee, under which they claim by mesne conveyances duly registered in Monroe county, Tennessee, where said land is situated, and title by inheritance and devise.

That the said line between Tennessee and North Carolina as is shown by the report of the commissioners appointed under act of 1819, follows the divide of the waters, the highest crest of the mountain from Little Tennessee river to a point known as the Messmore tollgate, an undisputed point on the crest of the mountain some ten miles from the southwesterly corner of the complainants' land above described.

That the land is mountain land, valuable chiefly for pasturage as wild range of cattle, for the timber thereon, and possibility of minerals, and that it is impracticable to inclose any considerable portion of it.

Your orators further state that one Mess Fain, of North Carolina,

fraudulently procured grant or grants from the State of North Carolina to be issued to himself, which, emanating from the State of North Carolina, purport to convey to said Fain a large part, several thousand acres, of your orator's said land, which grants form a cloud upon complainants' land, as they are alleged to lie upon and cover the greater part of it; and the land in controversy is worth more than two thousand dollars.

That said Mess Fain is dead, and the defendants above named are his heirs at law and claim under the said North Carolina grants.

That the defendants named are now setting up claim to said land, and have at various times attempted to take possession of it; and are now threatening and preparing to cut timber and commit other trespass thereon, and asserting their right to use it for stock range, and preparing to interfere with the use of said land by your orators.

The title to said lands depends upon the location of the State line, which is the issue in the case, as defendants can have no possible right to it if the land was subject to grant from the State of Tennessee, and that defendants' claims are based on the contention that the State line lies some miles westward of the divide of the waters above described, cutting off some thousands of acres into the State of North Carolina of land which has been for generations considered as Tennessee land, on which complainants have paid taxes for more than fifty years, and which has never been occupied until comparatively recently and, as complainants are advised, the first white man's occupation made on said land was made by their tenants, who are still in occupation of the premises.

And your orators had hoped that their title would have been recognized and that the pretended titles of said defendants would have passed into innocuous desuetude, but open assertion of claim and ownership is now made by the defendants, and threats of, and preparation for, occupation and interference with your orators' tenants and employés.

Your orators show further that at one time when one of the defendants and others confederating with him undertook to put fences and houses on said land of your orators, suit in ejectment was brought and final judgment taken against those who were in possession at that time, but *as* this was, as your orators are informed, before the death of Mess Fain, whose heirs the defendants above named are now attempting to again set up their claim.

All of which actions, doings and pretenses of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orators in the premises. In consideration whereof, and for as much as your orators are remediless in the premises, at and by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable.

To the end, therefore, that the plaintiffs may have that relief which they can only obtain in a court of equity that the true line

of complainants' easterly boundary, to wit, the State line between Tennessee and North Carolina at the places stated in the foregoing bill, from the north end of the range line established by surveyors of the Ocoee district between ranges 6 and 7 of said district, around and including all the land on the waters of the Telico river to the south end of the said range line, a distance of some ten miles, be declared, ordained and established by proper decree of this court, and if necessary the line surveyed and monumented under order of this court as establishing the right of property.

That all the land on the waters of said Telico river east of
6 said range line be declared and decreed to lie and be in the State of Tennessee, in accordance with the calls given by the commissioners who surveyed and established the line in 1821, and the acts of the legislatures of the State- of Tennessee and North Carolina confirming them.

That the title of complainants to all the land described as it is in the foregoing bill, including all on the waters of Telico river east of said range line be declared valid, and all claims of respondents to said lands, derived by grants from the State of North Carolina, be declared invalid and void, and that same be annulled and canceled as clouds upon complainants' title.

That writ of possession be awarded complainants to put them in possession, should the same be deemed necessary.

That the defendants above named be enjoined by writ of injunction issued out of this honorable court inhibiting them and each of them and their employés from cutting timber or otherwise trespassing upon said land on the waters of Telico river, or interfering in any way with the tenants, agent and employés of your orators thereon, pending this suit, and upon final hearing that injunction be made perpetual.

That your orators may have such other, further and general relief as their circumstances may require, and as may be consistent with equity.

May it please your honors to grant unto plaintiffs a writ of subpœna to be directed to the said William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and her husband, Abraham Hosshaw, thereby commanding them, and each of them, at a certain time and under certain penalty therein to be limited to personally appear before this honorable court and then and there full, true, direct and perfect answer make, but not under oath, which is expressly waived, to all and singular the premises, and further to stand, perform and abide such further order, direction and decree therein as to this honorable court should seem meet, and be enjoined from interfering with your orators' use of said land by writ of injunction.

And your orators will ever pray, etc.

CHARLES SEYMOUR, *Solicitor.*

T. E. H. McCROSKEY, *Of Counsel.*

UNITED STATES OF AMERICA,
Northern Division of the Eastern District of Tennessee.

On this 28th day of April, A. D. 1899, before me personally came Charles Seymour, who having been duly sworn, declared on
7 oath that he is and has been for many years the agent and solicitor of the complainants in the foregoing bill, of which he knows the contents, and that the same are true, to the best of his knowledge, information and belief.

CHARLES SEYMOUR.

Sworn to and subscribed before me this 28th day of April, 1899.

[SEAL.] J. T. CARTER,
Dep. Clerk.

(Endorsed:) Bill. Filed April 28th, 1899. J. T. Carter, deputy clerk.

In the Circuit Court of the United States for the Eastern District of Tennessee, Northern Division.

HUGH STEVENSON, MATILDA C. ALLOWAY, Paul E. Stevenson, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Husband, James L. Kernochan, and George P. Wetmore
vs.
WILLIAM FAIN, JOHN FAIN, ROBERT FAIN, Jasper Fain, Allen Fain, Florence Hosshaw and Her Husband, Abraham Hosshaw.
} In Equity. No. 1153.

Now comes Charles Saymour and moves this honorable court for an order to proceed under section 738 of the Revised Statutes of the United States to obtain service upon said defendants, William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and her husband, Abraham Hosshaw, either by service upon said defendants wherever found, of an order of this court directing the said defendants, William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and her husband, Abraham Hosshaw, to appear, plead, answer or demur to complainants' bill at a day certain to be named in said order, or if service of said order is not practicable, then by publication.

This motion is made on the ground that the said defendants have not voluntarily entered their appearance herein, and do not
8 live in the eastern district of Tennessee, but said defendants, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and her husband, Abraham Hosshaw, are citizens

and residents of the State of North Carolina, and the said defendant William Fain, is a citizen and resident of the State of Georgia, as the same appears from original bill in this cause, which is sworn to.

CHARLES SEYMOUR,
By MORRELL,
Attorney for Complainants.

(Endorsed:) Motion for process. Filed May 15th, 1899. J. T. Carter, deputy clerk.

In the Circuit Court of the United States for the Eastern District of Tennessee, Northern Division.

HUGH STEVENSON, MATILDA G. ALLOWAY, Paul E. Stevenson, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Husband, James L. Kernochan, and George P. Wetmore
vs.
WILLIAM FAIN, JOHN FAIN, ROBERT FAIN, Jasper Fain, Allen Fain, Florence Hosshaw and Her Husband, Abraham Hosshaw.
} In Equity. No. 1153.

Upon motion of Charles Seymour, counsel for Hugh Stevenson, Matilda C. Alloway, Paul E. Stevenson, Maxwell Stevenson, by his next friend, Paul E. Stevenson, Eloise Stevenson Kernochan and husband, James L. Kernochan, and George P. Wetmore, and it appearing to the court that the defendants, William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and husband, Abraham Hosshaw, have not voluntarily entered their appearance herein and are not inhabitants of this district, but that the said defendants, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and husband, Abraham Hosshaw, are citizens and residents of the State of North Carolina, and that said
9 defendant William Fain, is a citizen and resident of the State of Georgia.

It is hereby ordered that the said defendants, William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and husband, Abraham Hosshaw, appear, plead, answer or demur to said bill filed by plaintiffs herein on or before the third day of July, 1899; and it is hereby further ordered that a copy of this order be served on the said defendants if practicable, wherever found, or if such personal service is not practicable, it shall be published for four consecutive weeks in the Madisonville Gazette, a newspaper of general circulation and published at Madisonville, Monroe county, Tennessee, in said district.

And it is further ordered that in case the said defendants, William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and husband, Abraham Hosshaw, do not appear within the time so limited, the court, upon proof of the service or of publication of said order, and of the performance of the directions contained therein, will entertain jurisdiction and proceed to the hearing and adjudication of the above cause in the same manner as if said defendants William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and husband, Abraham Hosshaw, had been served with process within said district.

Enter this.

CLARK, *J.*

No. 1153. In the U. S. circuit court at Knoxville. Hugh Stevenson *et al.* against William Fain, *et al.* Order. Ent'd Journal R, p. 99. Filed 15th day of May, 1899. J. T. Carter, deputy clerk.

Order for Service.

Be it remembered, that at a circuit court of the United States, began and held for the northern division of the eastern district of Tennessee, at the Federal court rooms in the city of Knoxville, within said district, and the sixth circuit, on the second Monday, it being the 13th day of March, A. D. 1899.

Present and presiding the Honorable C. D. Clark, United States district judge for the eastern and middle districts of Tennessee.

10 The following proceedings were had, to-wit:

MONDAY, *May 15th*, 1899.

Court met pursuant to adjournment, presiding at chambers in Chattanooga:

The Honorable C. D. Clark, United States district judge for the eastern and middle districts of Tennessee.

HUGH STEVENSON, MATILDA C. ALLOWAY, Paul E. Stevenson, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Husband, James L. Kernochan, and George P. Wetmore

vs.

WILLIAM FAIN, JOHN FAIN, ROBERT FAIN, Jasper Fain, Allen Fain, Florence Hosshaw and Her Husband, Abraham Hosshaw.

In Equity. No. 1153.

Upon motion of Charles Seymour, counsel for Hugh Stevenson, Matilda C. Alloway, Paul E. Stevenson, Maxwell Stevenson, by his next friend, Paul E. Stevenson, Eloise Stevenson Kernocchon and

her husband, James L. Kernorchan, and George P. Wetmore, and it appearing to the court that the defendants, William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and husband, Abraham Hosshaw, have not voluntarily entered their appearance herein and are not inhabitants of this district, but that the said defendants, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and husband, Abraham Hosshaw, are citizens and residents of the State of North Carolina, and that said defendant William Fain is a citizen and resident of the State of Georgia.

It is hereby ordered that the said defendants, William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and Abraham Hosshaw, appear, plead, answer or demur to said bill filed by plaintiffs herein on or before the third day of July, 1899; and it is hereby further ordered that a copy of this order be served on the said defendants, if practicable, wherever found, or if such personal service is not practicable it shall be published for four consecutive weeks in the Madisonville, Gazette, a newspaper of general circulation, and published at Madisonville, Monroe county, Tennessee, in said district.

11 And it is further ordered that in case the said defendants William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and husband, Abraham Hosshaw, do not appear within the time so limited, the court upon the proof of the service, or upon publication of said order, and of the performance of the directions contained therein, will entertain jurisdiction and proceed to the hearing and adjudication of the above cause in the same manner as if said defendants, William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and husband, Abraham Hosshaw, had been served with process within said district.

Enter this.

(Signed) CLARK, *J.*

UNITED STATES OF AMERICA,
Eastern District of Tennessee, Northern Division, } ss:

I Henry O. Ewing, clerk of the circuit court of the United States for the eastern district of Tennessee, do hereby certify that the foregoing is a full, true and correct copy of an order this day made in the cause mentioned in the caption, as the same appears of record and on file in my office.

Witness my hand and the seal of said court at office in Knoxville, Tennessee, this 15th day of May, A. D. 1899.

[SEAL.] HENRY O. EWING, *Clerk,*
By J. T. CARTER,
Deputy Clerk.

(Endorsed:) I hereby certify that I have executed the within writ by serving a copy of the same on William Fain personally, at

Atlanta, Ga., on May 23, 1899. W. H. Johnson, U. S. mar., by W. C. Thomas, deputy.
Mar. costs $2.00.

Filed May 24, 1899.

J. T. CARTER,
Deputy Clerk.

Be it remembered that at circuit court of the United States began and held for the northern division of the eastern district of Tennessee at the Federal court rooms in the city of Knoxville, within said district and the sixth circuit, on the second Monday, it being the 13th day of March, A. D. 1899.

12 Present and presiding, the Honorable C. D. Clark, United States district judge for the eastern and middle districts of Tennessee.

The following proceedings were had, to wit:

MONDAY, *May 15th*, 1899.

Court met pursuant to adjournment.

Presiding at chambers in Chattanooga, the Honorable C. D. Clark, United States district judge for the eastern and middle districts of Tennessee.

HUGH STEVENSON, MATILDA C. ALLOWAY, Paul E. Stevenson, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Husband, James L. Kernochan, and George P. Wetmore *vs.* WILLIAM FAIN, JOHN FAIN, ROBERT FAIN, Jasper Fain, Allen Fain, Florence Hosshaw and Her Husband, Abraham Hosshaw.	In Equity. No. 1153.

Upon motion of Charles Seymour, counsel for Hugh Stevenson, Matilda C. Alloway, Paul E. Stevenson, Maxwell Stevenson, by his next friend, Paul E. Stevenson, Eloise Stevenson Kernochan and husband, James L. Kernochan, and George P. Wetmore, and it appearing to the court that the defendants, William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and husband, Abraham Hosshaw, have not voluntarily entered their appearance herein and are not inhabitants of this district, but that the said defendants John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and husband, Abraham Hosshaw, are citizens and residents of the State of North Carolina, and that said defendant, William Fain is a citizen and resident of the State of Georgia.

It is hereby ordered that the said defendants, William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and

husband, Abraham Hosshaw, appear, plead, answer or demur to said bill filed by plaintiffs herein on or before the third day of July, 1899; and it is hereby further ordered that a copy of this
13 order be served on the said defendants if practicable wherever found, or if such personal service is not practicable, it shall be published for four consecutive weeks in the Madisonville Gazette, a newspaper of general circulation and published at Madisonville, Monroe county, Tennessee, in said district.

And it is further ordered that in case the said defendants, William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and husband, Abraham Hosshaw, do not appear within the time so limited, the court upon proof of the service or of publication of said order, and of the performance of the directions contained therein, will entertain jurisdiction and proceed to the hearing and adjudication of the above cause in the same manner as if the said defendants, William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and husband, Abraham Hosshaw, have been served with process within said district.

Enter this.

(Signed) CLARK, *J.*

UNITED STATES OF AMERICA,
Eastern District of Tennessee, Northern Division, } ss:

I, Henry O. Ewing, clerk of the circuit court of the United States for the eastern district of Tennessee, do hereby certify that the foregoing is a full, true and correct copy of an order this day made in the cause mentioned in the caption, as the same appears of record and on file in my office.

Witness my hand and seal of said court at office in Knoxville, Tennessee, this 15th day of May, A. D. 1899.

[SEAL.]

HENRY O. EWING, *Clerk,*
By J. T. CARTER,
Deputy Clerk.

Executed by reading and delivering a copy hereof to John Fain and Robert Fain at Murphy, N. C., on this June 14th, 1899, and executed by reading and delivering a copy hereof to Florence Harshaw and her husband, Abraham Harshaw, at near Murphy on June 16, 1899.

J. M. MILLIKAN, *Marshal,*
By J. C. JENKINS, *D. M.*

Fee, $8.00.

Executed the within by delivering a copy hereof to Allen Fain in Greensboro, N. C., on the 19 day of June, 1899.

J. M. MILLIKAN, *U. S. M.*
J. A. LOGAN, *D. M.*

$2.00.

14 Served the within by delivering a copy as to Jasper Fain and by reading original to Jasper Fain in Asheville, N. C., May 20, 1899.

J. M. MILLIKAN,
U. S. Marshal,
Per J. M. CHAMBERS, *D. M.*

Fee, $2.00.

Filed June 21, 1899.

J. T. CARTER,
Deputy Clerk.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee, at Knoxville.

HUGH STEVENSON, MATILDA C. ALLOWAY, Paul E. Stevenson, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Husband, James L. Kernochan, and George P. Wetmore

vs.

WILLIAM FAIN, JOHN FAIN, ROBERT FAIN, Jasper Fain, Allen Fain, Florence Hosshaw and Her Husband, Abraham Hosshaw.

} In Equity. No. 1153.

The joint and several answer of William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and her husband, Abraham Hosshaw, to the bill of complaint of the plaintiffs above named.

These defendants now and at all times hereafter, saving and reserving to themselves, and each of them, all benefit and advantage of exception, which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, they, these defendants, severally answering, say:

That they know not and have not been informed, save by the said complainants' said bill, and can not set forth as to their belief or the belief of either of them, or otherwise, whether the said complainants are the owners in fee of the land described in their bill of complaint, as situate on the waters of Telico river in Monroe
15 county, Tennessee, or whether the said complainants are and have been for more than twenty years in possession of said land, through their tenants or otherwise, or whether their titles to said lands is derived through duly issued grants from the State of Tennessee, or by inheritance or devise.

And these defendants further severally answering say that they, and each of them, disclaim all right, title and interest in and to any and all lands situate in Monroe county in the State of Tennessee claimed by the complainants in this suit, and these defendants and each of them, say that they do not know that they, to their knowledge or belief, ever had, nor did they claim or pretend to have, nor do they now claim any right, title or interest of, in or to any lands situate in Monroe county in the State of Tennessee, and they, and each of them, deny that they have ever trespassed upon or been in possession of any land situate in Monroe county, Tennessee, claimed by the complainants in this bill of complaint or otherwise.

And these defendants further severally answering say that the allegation in the said bill of complaint "that the said line between Tennessee and North Carolina follows the divide of the waters, the highest crest of the mountains from Little Tennessee river to a point known as the Messmore toll gate," and they, and each of them, denies that any such fact is shown by the report of the commissioners appointed under acts of 1819, or by the report of commissioners appointed under any other act, either of the General Assembly of the State of Tennessee or the General Assembly of the State of North Carolina, and they deny, and each of them denies, that the Messmore toll gate is an undisputed point, or any point at all, upon the line between the States of Tennessee and North Carolina.

And these defendants further severally answering say that the allegation of the complainants' said bill "that one Mess Fain, of North Carolina, fraudulently procured grants from the State of North Carolina to be issued to himself, which emanating from the State of North Carolina purport to convey to said Fain a large part, several thousand acres, of your orator's said lands, which grants form a cloud upon the plaintiffs' title, as they are alleged to lie upon and cover the greater part of it," is untrue, and is denied, and these defendants, and each of them say that said Mess Fain never at any time fraudulently procured a grant or grants from the State of North Carolina to be issued to himself for any land situate in Monroe county, Tennessee, or any land owned by the complainants
16 in this cause, or any other land whatever, and these defendants, and each of them, deny further that any of the grants to said Fain form a cloud upon complainants' land or upon their title, or cover the greater part of any part whatever of any lands owned by the said complainants.

And these defendants further severally answering say that it is true that they, except Abraham Harshaw, who intermarried with Florence Fain, are the heirs at law of the late Mercer Fain of the State of North Carolina, who died in the month of March, 1893, in said last named State.

And these defendants further severally answering say that the allegation of the complainants' said bill that they "are now setting up claim to said land and have at various times attempted to take possession of it, and are now threatening to cut timber and commit other trespassess thereon, and asserting their right to use it for

stock range, and preparing to interfere with the use of said lands by your orators," is, in every part thereof, untrue, and is denied.

It is not true that these defendants, or either of them, are now setting up claim to any lands owned by the complainants in Monroe county, Tennessee, or elsewhere, nor is it true that they, or either of them, have at various times attempted to take possession of it, or are now threatening or preparing to cut timber or commit other trespasses thereon, or are asserting their right to use it for stock range, or are preparing to interfere with the use of said lands by the complainants.

And these defendants further severally answering say that these defendants, or either of them, have no knowledge or information other than is furnished by the said complainants' said bill of complaint whether the complainants' title to the said lands depends upon the location of the State line, but the defendants severally deny that their claims, or the claim of either of them, are based on the contention that the State line lies some miles westward of the divide of the waters described in the complainants' bill; and these defendants, and each of them, further deny that they have any knowledge or information other than such as is furnished by the complainants' bill of the payment of taxes by the complainants for more than fifty years, and they further deny that they, or either of them, have ever made or do now make open assertion of claim and ownership of any lands lying in the county of Monroe, State of Tennessee, claimed by the complainants or that they, or either of them have made any threats of or preparation for occupation or interference with complainants' tenants and employés.

17 And these defendants further severally answering say that the allegation of the complainants' said bill, to wit: "Your orators show further that at one time when one of the defendants and others confederating with him undertook to put fences and houses on said land of your orators suit in ejectment was brought and final judgment taken against those who were in possession at that time," is untrue, and deny that any such action, as alleged, was ever brought against any one of these defendants or other persons confederating with them.

And these defendants further answering say that, as they and each of them, are informed and believe the object and purpose of the bill of complaint in this action is not to remove a cloud from title, but to try the title to a certain piece of land which lies in the State of North Carolina, and is owned by these defendants as the heirs of the said Mercer Fain.

That, as they are advised, the bill of complaint shows upon its face that the purpose of said suit is to try the title to said tract of land.

And these defendants further severally answering say that so far as any land to which they lay claim is concerned the same lies wholly within the State of North Carolina; that the line between the States of Tennessee and North Carolina in respect of the lands

claimed by these defendants was established in 1821, and so much of it as is necessary for the purposes of this suit is as follows:

"And crossing Tennessee river at the distance of 65 miles from the beginning; from Tennessee river to the main ridge, and along the extreme height of the same, to the place where it is called Unakoi or Unaka mountain, striking the old trading path, leading from the Valley-towns to the Overhills-towns, near the head of the west fork of Tellico river, and at the distance of 93 miles from the beginning; thence along the extreme height of Unakoi or Unaka mountain to the southwest end thereof, at the Unakoi or Unaka turnpike road, where a corner stone is set up, marked Ten., on the west side, and N. C. on the east side, and where a hickory tree is also marked on the south side. Ten., 101 M., and on the north side, N. C., 101 M., being one hundred and one miles from the beginning."

And all of the lands claimed by these defendants, as the heirs of the said Mercer Fain, lie wholly on the North Carolina side of so much of the dividing line between the States of North Carolina and Tennessee, as is above set forth, and these defendants have
18 been in the actual, open, continuous, notorious, exclusive and unequivocal adverse possession of said lands, claiming the same under grants from the State of North Carolina to the said Mercer Fain, for more than seven years prior to the commencement of this suit, and are still in such possession of said lands, claiming the same as their own.

And these defendants further answering say that, in respect of the lands so claimed and possessed by them, their ancestors, the said Mercer Fain, from the time he received his grants for the same from the said State of North Carolina until the time of his death, in 1893, listed the said lands for taxes in the county of Cherokee in said last named State, and paid the taxes thereon, and these defendants, since his said death, have done the same.

And these defendants further severally answering say that they are informed and believe that the solicitor for the plaintiffs in this cause before and at the time he filed the bill of complaint therein knew that these defendants were in the actual possession of said lands, claiming the same as their own, and that he has been in possession of such knowledge for many years.

And these defendants further answering say that in the year 1892 the plaintiffs in this suit brought a suit in equity in this court against one of these defendants, to wit: Jasper Fain, and other parties, defendants in said suit named, to recover the very identical lands mentioned and described in this suit, and in the bill of complaint in said suit it was alleged "that the defendants on the 1st day of January, 1888, entered thereon, and unlawfully withhold and detain the same, together with $5000 due for the detention thereof."

It is true as alleged in complainants' bill in this suit that at the time the said suit was begun in 1892 the said Mercer Fain was living; but, as these defendants are advised and believe, this court, sitting as a court of equity, was without jurisdiction to try an action

of ejectment, and that all the proceedings of the said suit of 1892 were absolutely null and void, as being *coram non judice.*

And these defendants further answering say that no personal service of process was ever made upon the defendant, Jasper Fain, in the said suit of 1892, within the State of Tennessee, nor was he ever served with a copy of the bill of complaint in said case at any time or any place; that the said Jasper Fain was not, in 1892, or at any time prior or subsequent thereto, a citizen or resident of the State of Tennessee, and these defendants are advised and believe
19 that this court did not in the said suit of 1892 obtain jurisdiction of the person of the said Jasper Fain in the said suit, and had no authority or jurisdiction to render any judgment against him.

And these defendants further answering say that in April of the present year the plaintiffs in this suit through their solicitor or counsel procured a writ of possession to be issued by the clerk of this court upon a decree or judgment rendered in the said suit of 1892, and placed the same in the hands of a deputy United States marshal in the State of Tennessee, who came into the State of North Carolina, accompanied by the sheriff of the county of Monroe in the State of Tennessee and attempted to execute the said writ, and arrested the said Jasper Fain, and held him in custody for about 48 hours; that the said Jasper Fain thereupon caused warrants to be issued by certain magistrates in North Carolina against said deputy marshal and said sheriff of Monroe county, charging them with a violation of the criminal laws of the State of North Carolina, and the same were duly executed by arresting said deputy marshal and said sheriff, and that they thereupon applied to the Honorable H. G. Ewart, United States district judge, for the western district of North Carolina, for a writ of *habeas corpus*, which was granted by the said judge, and upon the hearing of the said writ the said judge dismissed the same and remanded the said deputy marshal and said sheriff to the authorities of the State of North Carolina; that upon the hearing of the said writ the main issue was the location of the line between the States of North Carolina and Tennessee, and the said judge found, held and decided that the said line was as claimed by these defendants, and that the lands claimed by these defendants and from which the attempt was made to eject the said Jasper L. Fain were situate in the State of North Carolina.

And these defendants further answering say that it is not true as alleged in said bill of complaint that the plaintiffs are the owners of any lands claimed by these defendants, or that these defendants claim any lands owned by the plaintiffs, and that it is not true that any grant or grants under which these defendants claim constitute a cloud upon the title, claim or ownership of the lands claimed by the plaintiffs.

And these defendants submit to this honorable court that all and every of the matters in said complainants' bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said complainants are not entitled to

any relief from a court of equity, and these defendants hope they shall have the same benefit of this defense as if they had de-
20 murred to the said complainants' bill; and these defendants deny that the complainants are or ever have been in possession of the lands claimed by these defendants, or any part thereof; that they aver they were not in possession of any part thereof when this suit was begun, and that any possession they may have had of any lands situate in Monroe county, Tennessee, never extended to or embraced any of the lands embraced in the grants from the State of North Carolina to Mercer Fain, under which these defendants claim.

And these defendants, and each of them, deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause or thing in the said complainants' bill of complaint contained, material or necessary for the defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge and belief of these defendants and each of them; all of which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

F. P. AXLEY AND
BEN POSEY,
Solicitors for the Defendants.

Filed July 3, 1899.

J. T. CARTER,
Deputy Clerk.

Replication.

HUGHE STEVENSON, MATILDA C. ALLOWAY, Paul E. Stevenson, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Husband, James L. Kernochan, and George P. Wetmore *vs.* WILLIAM FAIN, ROBERT FAIN, JOHN FAIN, Jasper Fain, Allen Fain, Florence Hosshaw and Her Husband, Abraham Hosshaw.	In Equity. Number 1153.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insuffi-
21 ciencies of the said answer, for replication thereunto saith, that they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by these repliants; without this that any other matter or thi ng whatsoever in the said answer contained, material or effectual in

the law to be replied unto, confessed and avoided, traversed or denied, is true;

All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct; and humbly prays as in and by their said bill they have already prayed.

HUGH STEVENSON,
MATILDA C. ALLOWAY,
PAUL E. STEVENSON,
PAUL E. STEVENSON,
Next Friend,
ELOISE KERNOCHAN,
JAS. D. KERNOCHAN,
GEO. P. WETMORE,
By CHARLES SEYMOUR, *Solicitor.*

Filed Aug. 7, 1899.

J. T. CARTER,
Deputy Clerk.

In the U. S. Circuit Court for the Northern Division of the Eastern District of Tennessee.

HUGH STEVENSON ET AL. vs. JASPER FAIN ET AL. } Equity Docket No. 1153.

Depositions of Oscar W. Moller and William D. Hale, witnesses for complainants, taken by agreement waiving notice and former caption and certificates, at Knoxville, this the second day of January, 1900.

The first witness, having been duly sworn, deposed as follows:

Q. 1. State your age, residence and how long you have been a surveyor, and what official positions you have held as such during what periods?

A. I am sixty-five years old, live in Polk county, Tennessee, have been a surveyor about twenty-five years, and have been
22 county surveyor in Polk Co., Tenn., about twenty years of that time. I have been engaged in surveying off and on before that time, making my experience about forty years.

Q. 2. Polk county lies next south of Monroe and joins it on the North Carolina line, does it not, and how much of the boundary of Polk county is made by the State line between Tennessee and North Carolina?

A. It does; I think Polk county and North Carolina join for about ten miles; am not certain as to the distance.

Q. 3. How much of your surveying has been done in the Ocoee district sectionized land and State lines bounding it of Polk and Monroe county?

A. About seventy-five per cent.

Q. 4. What surveys have you made and when and under what instructions of the State line between Tennessee and North Carolina in Polk and Monroe counties?

A. About ten years ago I made a preliminary examination of the North Carolina and Tennessee State line, familiarizing myself with the location of the country around the pocket so called. Several years after I went there accompanied by the county surveyor of Monroe county, Mr. De Witt, to examine the ground and look for marks. This was done at the instance of Chas. Seymour, Esq., as attorney for G. P. Wetmore, and the heirs of V. K. Stevenson, who owned a tract of land in that region. My instructions were to look diligently for everything bearing on land lines and occupations and report what I found. On my first trip I merely looked for occupants. On my second we crossed the divide—crossed Telico river near the mouth of Tipton and Rough Ridge creeks, and went up a spur of the mountain pointing to the river and leading towards Laurel top, a prominent elevation on the main ridge. In ascending this spur I noticed a number of trees hacked as line trees. The marks were then apparently about ten years old, and I paid but little attention to them on account of their freshness. We followed this ridge to its junction with the main ridge, and then followed it around in a southerly direction. I was running the compass—De Witt was looking for marks. He reported several State line marks which he found, generally in rather low places where the range formed flat gaps. We came off the mountain close to what is called Tipton gap. My next experience on this State line was in September, 1895, when I made a preliminary examination of the Slick Rock country. I found several trees marked with State line marks, but the extremely hot weather and abundance of snakes cut the work short at that time.

23 In December of the same year I was called on by Messrs. Seymour and McCroskey, attorneys for Mr. Hebbard, to locate the State line between the Little Tennessee river and the Georgia line, and, in company with W. D. Hale and J. K. Wilson, surveyors, ran the line to Hiwassee river during December, 1895, and Jan., Feb. and April, 1896.

Our instructions were to run the line according to the calls found in the report of the commissioners of North Carolina and Tennessee, appointed to that work in 1821, as recorded in the Code of Tennessee, and search diligently for everything bearing on the line in any way. We accordingly proceeded to the north side of Little Tennessee and examined the State line where it was undisputed. J. K. Wilson having worked a great deal in that region, was a great help. We traced the line to Tennessee river, finding enough marked trees to be sure of the line—the last tree was a large spruce pine on the north bank of Tennessee river, marked as a fore and aft. Crossing the river we had some difficulty, finding no satisfactory marks on trees. But the formation of the ground was such that we could readily distinguish the continuation of the main ridge along the

summit of which we found the marked line on the north side of the river. We accordingly traced the divide of the waters between Slick Rock creek and the waters running into Cheoa. This divide runs over the Hangover, Stratton bald, Haw knob, Laurel top, Buffalo Stamps, McDaniel bald, Peckerwood ridge, Rocky knob, Lovingood knob, Beaverdam bald and along the top of the Unicoi mountains, dividing the waters of Santeetla, Snow Bird, Davis creek, Beaver Dam, flowing eastwardly from its crest, from the waters of Tallassee Citico and the tributaries of Tennessee flowing into it west of N. C. line—Telico river with all its branches and Coker creek all flowing in the opposite direction. This range, though cut by many gaps, is continual and is a perfect divide of these waters. We found on this line many State line marks; on high points, generally, all marks were gone; on low points, however, we would again find them. There was no difficulty in finding marks on the line running south from Unaka turnpike to Hiwassee river.

This line corresponding with the report of the commissioners, we adopted it as the State line.

Q. 5. What survey did you make of the Grassy Knob spur leading to river from the Hog Jaw gap and up the little ridge and across to the Jenks ridge leading to the Jenks knob, and what did you find on this line? If a surveyed line, surveyed by whom?

24 A. We started at the place where the marks said to have been made by McClellan, indicating his survey, left our survey of the State line which is near Hog Jaw gap and traced his survey. Running down the spur to Telico river we found several trees blocked; we also found some marks or rather indication (disturbances of the bark), we blocked some of these, but found no State line marks that were old enough to be original. From the Hog Jaw gap the ridge rises somewhat till it forms a knob named Grassy knob, then descends with a gradual slope to the river. Crossing the river the survey runs up a small spur a little way then crosses a hollow with branch, runs on to Jinks ridge (a spur that runs down from Jinks knob on the divide and points to the river about a quarter of a mile above the crossing of this line) and strikes the survey we made of the State line on the top and on the divide. On the first spur we found a holly with some semblance of letters and figures—a figure 8 tolerably plain, a piece of an M—the remaining fragment could be tortured into several things being very indistinct. Near this tree is a stump of a pine which on a former occasion before the tree was cut was examined by me; it contained two hacks on the north and two hacks on the south side like a fore & aft tree on a quarter section line in the Ocoee district. It was not a State line mark. We found no other old marks on this ridge or spur.

Q. 6. Examine this map Exhibit "A" to deposition of W. D. Hale in this cause herewith shown you, as these depositions are taken together, and state whether or not this map is a correct representation of the lines and topography shown thereon, and if it coincides with your actual survey and examination?

A. Exhibit "A" to W. D. Hale's deposition was platted from the field notes of the actual survey, and is approximately correct. It was carefully made by W. D. Hale and myself from our field notes and I make it Exhibit "A" to my deposition.

Q. 7. State some of the reasons for construing the dividing ridge shown by you as the State line to be the true State line according to the statutes of Tennessee.

A. There is no other continuous ridge between the undisputed points. Standing on the spur on which the McClellan line is marked, the ridge running around the headwaters of the Telico stands out prominent and distinct with its knobs and gaps—all higher than this cut-off line except where they join at the north and south end, the Grassy knob being a knob close to the point of junction at the north and Jenks knob at the south.

Q. 8. In the Code of Tennessee the description of the
25 State line calls for "striking the old trading path from the valley towns to the overhill towns"—where did the divide State line you ran strike this path and how far run with it?

A. There are many trails; we crossed many and ran along many. I could not identify any as the trading path of the Indians; a trail when abandoned soon is obliterated. The Washeta trail is now traveled; we struck it some distance southwest of Jinks knob and followed it for several miles. There is a wagon road now running from Tellico river through the Tipton gap across to Beaver Dam settlements.

Q. 9. Indicate the Tipton gap on your map Exhibit "A."

A. It is indicated as "Tipton gap."

Q. 10. Examine this map herewith presented you purporting to be a copy of township two of the seventh range east of the Ocoee district land office of Tennessee and state whether the State line shown on this map follows the divide ridge or the McClellan line, and whether this map shows the land in the controversy in this cause.

A. The map of Fr. T. 2 R. 7 E. Ocoee district, which I make Exhibit E to my deposition, shows the State line on the divide and not on the McClellan line. The land in controversy is represented by this map.

Q. 11. Examine the paper presented to you purporting to be a map of part of Tennessee and North Carolina—state if it is substantially correct as regards the land in controversy and file it as Exhibit F to your deposition.

The defendants, by their counsel, object to the introduction of the map or paper referred to in the foregoing question, because the same does not purport to have been made by any authority of law, nor by an actual survey of the land purporting to be represented thereon. That the same is not competent, is immaterial and irrelevant to the issues involved in this controversy.

BEN POSEY,
GREEN & SHIELDS,
Counsel for Def'ts.

A. It is substantially correct and I file it as Exhibit F to my deposition.

Cross-examination of O. W. MILLER by-Col. BEN POSEY:

Q. When was the first time that you ever went to look at this State line that you say you went in search of?

A. It has been about ten years ago. I don't remember what year. I went up there to look at the country, to see about occupancy.

26 Q. You were not then searching for the line?

A. No, sir.

Q. Who were you representing when you went up there?

A. Mr. Seymour, who was then the attorney for Wetmore & Stephenson, the complainants in this case.

Q. Were you ever there as the representative of anybody else except employed by them?

A. I suppose that Mr. Heberd was the principal at one time. I was there then at the instance of Col. Seymore.

Q. You state in a former part of your deposition that you traced the line north of the Tennessee river?

A. Yes, sir.

Q. That is not in several miles of the line in dispute here, is it?

A. No, sir. It is on the State line.

Q. That is where you found the most of the marks you speak of in your deposition?

A. We found several marks up there. We went to familiarize ourselves with the State line, to get a start to find out where it crossed the Tennessee river.

Q. You state in your deposition that you undertook to follow the State line as indicated by the Code of Tennessee. Now what did you find on that line which coincided with the clause in the Code of Tennessee, from the Tennessee river westward in a southwest direction?

A. We went on main ridge, and followed that main ridge to the Umaka turnpike, keeping on the water shed. The general direction is southwest, although very crooked.

Q. Do you know where the point on that line and on this map that has been introduced here as exhibit to Mr. Hale's deposition, designated as Laurel top?

A. Yes, sir.

Q. Where is Laurel top? Is it on the main ridge?

A. It is on the main ridge.

Q. In going a southwest direction from Laurel top is there a sudden break down here anywhere on this State ridge, until you get to Tellico river?

A. The break down is tolerably sudden from Grassy top. It rises from the place there marked County Corner to a knob called Grassy top, about one-half of a mile, I suppose.

—. Grassy top, then, is a high point on the State ridge?

A. Yes, sir, not far from this this ridge divides, the right end of

this elevation runs, and is called there "Rough ridge." I didn't take the elevation, but it looks like a higher top on it than any place on the State ridge.

27 Q. You speak of the State ridge. How long have you known that as the State ridge?

A. I heard it called the State ridge the first time I was ever there, which was about ten years ago.

Q. Did you measure the distance on this State Ridge line that the defendants claimed to be the true State line?

A. Yes, sir, we measured the distance, when I was in company with Mr. Hale, and I presume his figures are correct.

Q. Do you remember a holly tree on that State Ridge line that we claim to be on the State Line ridge, following the State ridge after crossing the Tellico river on the black line?

A. Yes, sir. The holly is not on the State ridge, but on a spur running to the river parallel to Jenks ridge, and west of it. I remember the holly.

Q. How is that holly marked?

A. That holly has no marks on it. It has some figures. It has one figure. They are not surveyors' marks. It has a figure "8" that is tolerably distinct, and then it has three prongs of an "m" on it, and it has another thing on it, I don't know what you would call it. You can make a piece of a "7," "5" or "6" out of it.

Q. Did you see any other marks on that black line?

A. Yes, sir, that black line is full of marks.

Q. Did you see any old marks there?

A. Yes, sir, I saw some old marks. I saw one tree marked with three hacks or chops, but they didn't look like any mark that a surveyor would make. They are about six inches long and they are close together, and they are not more than three feet, to the best of my recollection, from the ground.

Q. Were they very old marks?

A. Yes, sir, they were old marks in the bark. I have seen other marks. There is one mark that we discussed at one time as probably being the State mark. There was an indication on the tree that there had been axe work there. This tree stood on the State ridge, and we blocked it, and we found there was nothing but a blaze. It was too long and did not look like a surveyor made it.

Q. How much time since you were first employed by these people have you worked for these complainants?

A. I could not tell that.

Q. Was it a great deal, little or how?

A. I have done a good deal of work for them. I looked after the interest of the occupancies.

Q. Are you still in their employment?

A. I have not worked for them but very little till this fall.

28 Q. You have been working for them within the last year?

A. Yes, sir.

And further saith not.

O. W. MULLER.

Sworn to and subscribed before me this January 3rd, 1900.
[SEAL.] NORMAN B. MORRELL,
Notary Public.

The next witness, W. D. HALE, having been duly sworn, deposed as follows:

Direct examination by CHARLES SEYMOUR:

Q. 1. State your age, residence and how long you have been a surveyor, and what official positions you have held as such—during what periods?

A. I am forty-one years of age; am a surveyor, and have been for twenty-one years. Served eight years as county surveyor for Monroe county, beginning the first term twelve years ago.

Q. 2. You have always lived in Monroe county?

A. I was born and raised in Monroe county.

Q. 3. How much of the Ocoee district between Little Tennessee river and the Polk County line have you become familiar with as surveyor, and for how long have you been making surveys in that region?

A. For about fifteen years I have been running lines in ranges four, five, six and seven east of the Ocoee district.

Q. 4. Which of these ranges reach to the North Carolina line?

A. The range four may not, but all the others do.

Q. 5. What surveys have you made of the State line between Tennessee and North Carolina and the boundary lines also of Polk and Monroe counties, and under what instructions?

A. In 1895 I was instructed by the attorneys for Hebard, Wetmore and Stevenson and Heyser to make a survey of the State line from the Tennessee river to the Hiwassee river. My instructions were to read the description of the State line as given in the Code of Tennessee and run that line, finding all the information I could get. I began north of the Tennessee river about four miles in order to familiarize myself with the State line mark; followed the line to the river; crossed the river, then around up the first ridge
29 bearing line marks opposite on the north side of the river; followed the line around this dividing ridge dividing the waters of Bear creek, Deep creek, Santeetla creek on the North Carolina side, Slick Rock creek, Citico creek on the Tennessee side; Santeetla creek, Snow Bird, Davis, Beaver dam, Schulers, Cain creeks on the North Carolina side; Telico river and Coco creek on the Tennessee side, passing by the Hangover, Hao, Stratton meadows, Haw knob, Laurel top, Mitchell Licks, Buffalo Stamps, Peckerwood ridge, McDaniel bald, Beaverdam bald, and over Hangover at the head of Telico; Rocky knob, Tipton knob, Jenks knob, Beaver Dam bald, Hipps gap, Unaka mountain to the Unaka pike; thence south to the Hiwassee river. I was to note all marks I could find on this line and determine from the code where the State line was located. I have also from near Laurel top ran a line down

what is called McClellan line to the Telico river, across the Telico river and up the opposite side, the south side of the Telico river to Jenks knob. This is all the surveys that I have made on the State line and vicinity for the purpose of determining the State line.

Q. 6. State if you have examined the Ocoee District records and the official maps and have run range and township lines so as to know whether the line of land surveyed in the Ocoee district follows and includes in said district all the land on the waters of Telico east of the sixth range; if so, state what range or ranges, and whether you have located the range lines and identified the sectional descriptions of the land.

A. I have run range line of range 7 east and the township line dividing the first fractional township from the second fractional township. The second fractional township embraces the head waters of the South fork of Telico river, and the official maps of the Ocoee district approximately embrace the said lands in same range and townships.

Q. 7. State whether on this line from the Little Tennessee river at point on the recognized line of Tennessee and North Carolina to the corner generally recognized and marked in the Turnpike Toll Gate gap you crossed running water.

A. No, sir.

Q. 8. In running what you speak of as the McClellan line, what waters of Telico did you cross?

A. The South fork—the Main prong.

Q. 9. In running the line up the Hog Jaw ridge from the river to the How Jaw gap, near Laurel top, what marks did you find?

30 A. None; a great many trees had scars on them, but none recognized as State line marks.

Q. 10. What water did you cross in following the McClellan line from Telico river to the Jenks knob?

A. We crossed a small spring branch; I do not know whether it has any name or not.

Q. 11. If you have a map of the region in controversy in this suit please produce it and make it Exhibit "A" to your deposition.

A. I have a map and I so file it as Exhibit "A."

Q. 12. State if that map is made by actual survey.

A. Yes, sir.

Q. 13. In your survey of the dividing ridge line and the line down the Hog Jaw ridge and up Jenks ridge, as shown on your map, did you take the elevations of the various stations passed in your survey; if so, please file a profile showing comparative heights?

A. Have taken the elevations and herewith file profile map marked Exhibit "B" to my deposition.

Q. 14. How did you find the marked trees along the State line between the two rivers above referred to in your survey?

A. Between Tennessee river and the Hangover, 5 miles. I found about four marked trees; between the Hangover and past the Stratton bald, a mile, about four miles, found none; between Strat-

ton bald and the Stratton meadows, about three miles, found a good many—say twenty; the marks were found in low ground. From the Stratton meadows abound by Laurel top, four miles; Laurel top around by McDonald bald, Rocky knob, Beaver Dam bald, near Hipps gap, 20 miles, found none. Crossing Hipps gap 3 miles in the low part of the gap found some 8 or 10 trees—do not remember the number. Along the Unaka mountain about 5 miles found no marks. Dropping down off the butt of the Unaka mountain about 2 miles found marks very scarce, but some marked trees. This brings us to the Unaka Turnpike road. On the line running due south by compass bearing to Hiwassee river the marks were thick.

Q. 15. You know the Hog Jaw gap—state where it lies relative to the Laurel Top mountain.

A. It is about a half mile southwest of Laurel top.

Q. 16. If there is a higher point on the spur leading out from the Hog Jaw gap state what is the local name of that knob.

A. Grassy knob, between a quarter and a half mile southwest from Hog Jaw gap, and is a higher point than Hog Jaw gap.

31 Q. 17. State what marks you found along the McClellan line from the side of the Hog Jaw gap down to the Telico river. Whether the McClellan survey mark could be easily traced?

A. The McClellan survey line could be easily traced by the McClellan marks. The line was heavily marked—three chops on the trees; I suppose they were made by McClellan in 1893—they were not old marks.

Q. 18. You stated that you ran along the divide of the waters and adopted that as your survey of the State line. Give some of your reasons for that.

A. First I will say I did not adopt it; I recognized it as the State line because it was the main ridge described in the Code of Tennessee as the boundary between the State of Tennessee and the State of North Carolina.

Q. 19. If you have computed the distances by your actual survey from the Tennessee river to Laurel top, thence to Hog Jaw gap, thence to Jenks knob, thence to the Unaka mountain, thence to the Pike road, and thence to the Hiwassee river, state the distances between these points and the total of them.

A. The total from the Tennessee river to the Hiwassee river is 44 and one-fourth miles—44.22 to be close.

The distance from Tennessee river to Laurel top is.....	14.93 miles.
Laurel top to Hog Jaw gap.....	.6
Hog Jaw gap to Jenks knob.....	11.54
Jenks knob to Unaka mountain.....	9.82
Unaka mountain to Unaka turnpike, where it crosses the mountain.....	5.
From Unaka turnpike, where it crosses top of the mountain to Hiwassee river.....	2.87
Making in all.....	44.22 miles.

Q. 20. Will you letter Exhibit "A" at the following points:

(*a.*) The point where the McClellan line leaves Hog Jaw gap, which we understand to be an undisputed point on the State line, to follow the Hog Jaw spur or as defendants call it the State ridge.

(*b.*) The point where this McClellan line crosses the main Telico river.

(*c.*) The point on small spur where it makes an angle.

(*d.*) The point where it crosses Jenks spur or ridge.

(*e.*) The Jenks knob, where we understand to be an undisputed point on the State line.

(*f.*) The top of McDaniel bald, which we understand to be on the divide ridge, which we recognize as the State line.

32 A. I have so marked the map, Exhibit "A" to my deposition, and also at the top of the Peckerwood ridge have marked this point "*g.*"

Q. 21. Will you make the same letters at the same places on your Exhibit "B" to this deposition, so that the profile and a real map may correspond?

A. I have so marked it.

Q. 22. Will you define the McClellan survey, 1893, line as laid down on your map Exhibit "A" by letters on it?

A. "A" is the Hog Jaw gap where the North Carolina line leaves the divide between Buffalo, on the North Carolina side, and Telico, on the Tennessee side.

"B" is the point where the McClellan line crosses Telico river.

"C" is on a small spur south of the Telico river where the McClellan line turns southeast and crosses a branch.

"D" is where the McClellan line tops the Jenks ridge.

"E" is at the top of the Jenks knob where McClellan line joined the undisputed line.

Q. 23. Define the line you recognize as the main ridge called for in the State laws of 1821?

A. From A to G at Peckerwood ridge; F. McDaniel bald, and D the Jenks knob.

Q. 24. In your answer to question 6 you say fractional township two, range seven east includes land on the waters of the South fork of Telico. State what other name this fork has and what other land is covered by this township of the Ocoee district.

A. The other name of the South fork is the Main prong of Telico. The township also covers the land on the head of Sycamore fork and Rough Ridge creek in undisputed territory of Tennessee. This township of range seven covers all the land in dispute.

Q. 25. I show you chapter 196 of the Tennessee legislature of 1844—read section 1 and quote from it in your answer the words that apply to any of the land that lies between the McClellan line and the main "divide" ridge, and state what it covers.

Defendants object to the foregoing question and the answer sought thereby, because the State line between Tennessee and North Carolina was established by acts of the General Assembly of the two

States in 1821, and any subsequent enactment on the part of the General Assembly of either of the said States, without the concurrence of the other State, could not in any way change, alter or affect the State line as located by the commissioners appointed by the two States and confirmed by said act of 1821; and because, further, said enactment of the legislature of the State of Tennessee is
33 totally irrelevant and immaterial to the issues joined in this cause.

BEN POSEY,
GREEN & SHIELDS,
Counselors for Def't.

A. "Up the main south branch of said river," that is Telico, "to the head, a distance of 21 miles to the North Carolina line." The head of the main South fork of the Telico river is in the neighborhood of McDaniel Bald and the county formed by this act would include the land in dispute.

Defendants, by their counsel, move to strike out the foregoing question and answer for the reasons stated in the exception to the question. The commissioner taking the depositions overruled the exceptions, from which defendants appeal to the court.

Q. 26. I show you a published map purporting to be a map of the State of North Carolina. Please make this Exhibit "C" to your deposition and state whether the State line as indicated on this map, Rand & McNally's edition, shows the State line on the divide of the waters or in accordance with the McClellan line.

Defendants except to the foregoing question and the answer sought thereby because the map is not shown to have been made by any actual survey or by any authority of either the State of Tennessee or the State of North Carolina, or by any authority of the United States of America, or by anybody else, but on its face purports to be only a map made by some private concern without any survey whatever. Defendants except to the introduction of the said map as evidence in this cause because of these matters and because it is immaterial, incompetent and irrelevant to the issues joined in this cause.

BEN POSEY,
GREEN & SHIELDS,
Counsel for Def'ts.

A. I have marked the map Exhibit "C" to my deposition and it shows the State line on the divide of the waters of Telico river on the one side and Cheoah and Hiwassee on the other.

Defendants move to strike out and exclude said map from the evidence of the witness in relation to the same because of the mat-

ters stated in the foregoing exception to question. This motion being overruled by the commissioner, defendants appeal to the court.

BEN POSEY,
GREEN & SHIELDS,
Counsel for Def'ts.

34 Q. 27. I show you a map entitled U. S. Geological Survey—Tennessee—North Carolina—Murphy sheet—and ask you to file it as Exhibit "D" to your deposition, and state whether the State line indicated on this map follows the "divide" line as laid down on your map Exhibit "A," or whether it follows the McClellan line?

Defendants object to the foregoing question and the answer sought thereby, and to the filing of said map as evidence in this cause because it is not shown that in the making of this map by whomsoever it may have been made or by whatever authority, it was attempted to fix, settle, bind, establish or make the lines between the States of Tennessee and North Carolina, and is totally incompetent and irrelevant to the issues joined in this cause, and further because said map is not proven to have been made by the United States or by any one having authority to make said map or by any one having made any surveys from which the map was made.

BEN POSEY,
GREEN & SHIELDS,
Counsel for Def'ts.

A. I have marked the map Exhibit "D" to my deposition and it shows the State line on the divide of the waters as surveyed by me and not on the McClellan survey.

Defendants move to strike out the answer of the witness and exclude the map as evidence in this testimony for the reasons stated in the exception to the question, which motion being overruled by the commissioner, defendants appeal to the court.

BEN POSEY,
GREEN & SHIELDS,
Counsel for Def'ts.

Q. 28. From your surveys of this country in that region do you recognize that map as being substantially correct in its delineation of lines and natural objects?

A. Yes, sir.

Cross-examination.

Mr. SHIELDS, of Green and Shields, and Mr. BEN POSEY:

Q. 1. When did you first become in any way interested in finding the line between the States of North Carolina and Tennessee which is in dispute in this litigation?

A. Something like six years ago.

Q. 2. How did you become interested in it?

A. I was sent out by McCroskey as agent to receive this property from the officer who went to dispossess Jasper L. Fain and others.

Q. 3. What officer had the process and what process did he have?

Complainants' solicitor excepts to the question because irrelevant and on a matter about which no questions were asked in the direct examination.

A. G. W. Tallent, deputy U. S. marshal, had a writ of possession from the United States court at Knoxville. I do not know whether I can give the style of the case or not—it was Wetmore, Stevenson and others against Jasper Fain and others, to dispossess Jasper Fain and others.

Q. 4. Were the complainants in that suit from which this writ of possession issued the same parties who are now complainants in this suit?

Complainants' solicitor excepts to the question because irrelevant, incompetent and on a matter about which no questions were asked in the direct examination.

A. I think so—I have not seen the files of this suit.

Q. 5. You were at that time representing the same parties in your accompanying the officers to receive the lands that you are now representing in regard to these lands in North Carolina, are you not?

Complainants' solicitor excepts for reasons above.

A. Yes, sir.

Q. 6. What was the result of this trip that you made with this officer to take possession of these lands?

Complainants' solicitor excepts for reasons above.

A. As to Fain there was no result, but some of the other parties there were formally dispossessed and took leases.

Q. 7. Were these other parties on the particular lands involved in this particular suit?

Complainants' solicitor excepts for reasons above.

A. I do not know; I have not read the papers in this case. I do not know whether the same parties that took leases at that time are now parties to this suit or not.

Q. 8. At any rate you and the officer did not dispossess Jasper Fain and take possession of the property that he was then in possession of?

Complainants' solicitor excepts for reasons above.

A. No, sir.

Q. 9. Jasper Fain had a house on the property he was claiming, did he not?

Complainants' solicitor excepts for reasons above.

A. Yes, sir.

Q. 10. And was living there?

36 Complainants' solicitor excepts for reasons above.

A. Yes, sir.

Q. 11. And you and the officer left him in possession of these lands?

Complainants' solicitor excepts for reasons above.

A. We did.

Q. 12. Jasper Fain told you when you went to dispossess him that the land he was living on belonged to his father, didn't he?

Complainants' solicitor excepts for reasons above.

A. I don't remember; it strikes me that he did.

Q. 13. Didn't you and he at that time discuss the question as to where the State line between the State of Tennessee and the State of North Carolina was located?

Complainants' solicitor excepts for reasons above.

A. I do not remember that there was any discussion about it. I remember that he told me that the State line was north of his house on that ridge.

Q. 14. On what ridge?

Complainants' solicitor excepts for reasons above.

A. The ridge which is north of his house and pointing to it.

Q. 15. What did he call that ridge?

Complainants' solicitor excepts for reasons above.

A. I do not remember, that he named the ridge.

Q. 16. What is that ridge known as in that neighborhood?

Complainant excepts, by their solicitor, for reasons above.

A. State ridge.

Q. 17. Do you remember the year that this was in?

Complainants' solicitor excepts for reasons above.

A. No, I do not; can come very near it—it was between the time that Bryson was killed on the ridge and McClellan's survey—before McClellan made his survey.

Q. 18. Did not Jasper Fain show you on that occasion some juggles that he had cut out of trees on the State ridge which he claimed showed the State line to be on that ridge?

Complainants' solicitor excepts for reasons above.

A. No, sir.

Q. 19. Why did you not dispossess Jasper Fain?

Complainants' solicitor excepts for reasons above.

A. We were out of rations and a long ways from rations and it would require a great deal of work to move Jasper Fain's effects across the State line.

Q. 20. How long did it take you to get back and get rations and then return and dispossess Jasper Fain?

Complainants' solicitor excepts for reasons above.

37 A. I never returned to dispossess Jasper Fain.

Q. 21. Why did you not return?

Complainants' solicitor excepts for reasons above.

A. Because of a misunderstanding between Mr. Seymour and me.

Q. 22. Was he ever dispossessed?

Complainants' solicitor excepts for reasons above.

A. Not that I know of.

Q. 23. Do you know the fact that he was not?

Complainants' solicitor excepts for reasons above.

A. No, I do not.

Q. 24. Do you not know the fact that within the last eight months the complainants in this case have attempted to dispossess Jasper Fain under writ of possession issued in the same case that writ of possession was issued under when you went to receive the lands from the officer some eight or ten years ago?

Complainants' solicitor excepts for reasons above.

A. My knowledge of that is second hand.

Q. 25. Were you a witness in the case of Murphy L. Anderson, Wm. N. Barr and George W. Metcalfe, petitioners, *vs.* J. N. Elliott, constable, and A. J. Martin, sheriff, of Cherokee county, North Carolina, tried in the Federal court at Asheville, in May, 1899?

A. Yes, sir.

Q. 26. Don't you know as a fact that those petitioners had been arrested under warrants sued out in the State courts of North Carolina on the charge that they were trespassing upon lands of the estate of M. Fain, deceased, in attempting to put Jasper Fain off the property where you found him when you went there in the early nineties?

Complainants' solicitor excepts for reasons above.

A. Yes, sir, I know that fact from having been present at the trial.

Q. 27. Then don't you know that Jasper Fain is still in possession of that land and did not this appear by the evidence in that cause?

Complainants' solicitor excepts for reasons above.

A. I don't remember that that appeared in the trial that he had not been dispossessed.

Q. 28. Don't you know that it appeared as evidence in that trial that they were arrested while in the act of dispossessing Jasper Fain at Jasper Fain's house?

Complainants' solicitor excepts for reasons above.

A. I don't remember that it appeared in the trial—I did not hear all the evidence.

Q. 29. Is it not a fact that you have been at Jasper Fain's house on this disputed land in the last four months?

38 Complainants' solicitor excepts for reasons above.

A. No, sir, I was not at the house; I passed near the house on top of the ridge.

Q. 30. Is it not a fact that you were near Jasper Fain's house in October of 1899?

Complainants' solicitor excepts for reasons above.

A. Yes, sir.

Q. 31. Don't you know that he was then there in possession of this property?

Complainants' solicitor excepts for reasons above.

A. Yes, sir.

Q. 32. He was in October, 1899, just where you found him along in ninety-one or ninety-two, was he not?

Complainants' solicitor excepts for reasons above.

A. The house was at the same place, and I suppose he occupied the house. I saw Fain out on the ridge above there and talked to him.

Q. 33. Then, to the best of your knowledge, has not Fain been continuously in possession of this property since you attempted to put him out in 1891 or '92?

Complainants' solicitor excepts for reasons above.

A. As far as I know he was. There were intervals of two or three years when I was not around there.

Q. 34. When you have been in there Fain was still in possession?

Complainants' solicitor excepts for reasons above.

A. Yes, sir.

Q. 35. Have these complainants, to your knowledge, been in possession of that property at all?

Complainants' solicitor excepts for reasons above.

A. Yes; not where Fain is, but in possession of the property where those parties took leases.

Q. 36. You have already stated that you do not know whether those parties who took leases were in possession of any part of the land sued for in this cause?

Complainants' solicitor excepts for reasons above.

A. No, I do not.

Q. 37. Then, to your knowledge, have the complainants ever been in possession of any part of the land claimed by the heirs of M. Fain, deceased?

Complainants' solicitor excepts for reasons above.

A. I do not know that they have.

Q. 38. You testified in the case of Anderson, Barr and others, petitioners, already spoken of, that was tried in the Federal court at Asheville last spring, did you not?

A. Yes, sir.

Q. 39. Now you have stated that you became interested in the question of the State line for the complainants in the early
39 nineties. Have you been continually representing them in one way and another since that time?

A. No, sir.

Q. 40. In what respects have you represented them throughout that time?

A. I represented them as land surveyor at different intervals.

Q. 41. Have you been paid a salary or a *per diem* for the work you did?

A. *Per diem.*

Q. 42. How much time have you given them during this period?

A. I could not state very well now; probably three months all told.

Q. 43. You have recently surveyed these disputed lines at the instance of complainants, have you not?

A. Within the last three or four years—I surveyed one line within the last six months.

Q. 44. What line?

A. The McClellan line.

Q. 45. What do you mean by the McClellan line?

A. The line that McClellan ran from Jenks knob to the Hog Jaw gap in 1893.

Q. 46. What line did McClellan run?

A. I can trace his line by his marks from the Unaka Turnpike road to the Tennessee river, but it was not all the way on the State line.

Q. 47. What kind of marks did you see that McClellan made?

A. Three chops on trees.

Q. 48. Do you know that McClellan made them?

A. Local tradition says that he made them.

Q. 49. Can you state who informed you?

A. No, sir.

Q. 50. Not give the name of a solitary person who gave you this information?

A. Yes; John Dockery. He told me who the axeman was, but I don't remember now.

Q. 51. Do you know how McClellan came to run this line?

A. No, sir, only from second hand information.

Q. 52. Well, is that the same character of information that you speak from when you say that those were McClellan's marks?

A. Yes, sir.

Q. 53. Then state how McClellan came to run this line.

A. I heard Ben Posey say that he, acting for the State of North Carolina, I believe, employed McClellan to run the line—I am not positive, but I think this is the way it was.

Q. 54. Then, from your information, McClellan ran this line to find it under authority of the State of North Carolina?

A. Yes, sir.

Q. 55. Now I show you a map purporting to show the State line between North Carolina and Tennessee, beginning at the Tennessee river on the northeast and extending in a general southwesterly direction to the Unaka Turnpike road and purporting to show the point and lines where there is a controversy as to the true line as laid off by the commissioners of the States of Tennessee and North Carolina and which was confirmed and ratified by the legislatures of said States in 1821—I will ask you to state whether or not this map is substantially correct?

A. That map, I think, is substantially correct by the McClellan survey, so far as the land in this dispute is concerned.

Q. 56. You say it shows line according to the McClellan survey, with substantial correctness? Does it also show with substantial correctness by the red line marked on it and making a loop and encircling the head waters of the Telico river and its branches—what you claim to be the true line between the States of Tennessee and North Carolina?

A. Yes, I think it does.

Q. 57. Please file this map as Exhibit "H" to your deposition?

A. I so file it.

Q. 58. I see a point marked on this map Laurel top—please state what is meant by Laurel top?

A. It is a high peak of the mountain covered with laurel.

Q. 59. Is it on the main ridge?

A. Yes, sir.

Q. 60. Is it in dispute about the true State line being on Laurel top?

A. No, sir.

Q. 61. Following down the line as laid off on this map in a southwesterly direction we come to a point marked County Corner, and just at this point the red line diverges or rather strikes off in a southeasterly direction, which as I understand, indicates the point where complainants and defendants differ as to where the true State line is—is this correct?

A. Yes, sir.

Q. 62. I want to ask you what is the local name of the
41 ridge and what was its name before the McClellan survey was made, extending from Laurel top to the Telico river along down the black line which is claimed by the defendants to be the true State line and which was run as the State line by McClellan?

A. State ridge.

Q. 63. What is the distance from Laurel top to the Telico river along the top of this ridge that is called the State ridge?

A. About 4 and ½ miles.

Q. 64. How long has it been known as the State ridge?

A. Do not know; it was called the State ridge at my first knowledge about 7 or 8 years ago—maybe longer.

Q. 65. Was it not called and known as the State ridge long before the McClellan survey was made?

A. Yes, sir, I do not know how long.

Q. 66. Did you ever hear it called anything else but the State ridge?

A. No, sir.

Q. 67. Why was it called State ridge?

A. I do not know that; I suppose it derived its name from the fact that the commissioners going down the ridge made a mistake and ran off down the ridge.

Q. 68. Do you know that the commissioners made a mistake and ran down off the ridge?

A. Only from tradition.

Q. 69. Do you know that they made a mistake from tradition by going down off the ridge?

A. I have heard it said they went off the ridge; that is all I know.

Q. 70. Then the fact that they made a mistake and went down it is only a supposition of your own, is it not?

A. The mistake is not a supposition.

Q. 71. How do you know it to be a fact that they went off the ridge?

A. Because they report that they went around the divide.

Q. 72. In what book do they make that report?

A. Code of Tennessee.

Q. 73. Will you please take the Code of Tennessee and point this out?

A. It don't say the word divide, but it does say with the main ridge, and the main ridge is actually the divide.

Q. 74. Then when you stated that the Code of Tennessee says that they made a mistake you were incorrect, were you not?

A. No, sir.

Q. 75. Then will you please get the Code of Tennessee—I present it to you—and read to the stenographer that part of the code that says there was any mistake about it?

42 A. "And crossing Tennessee river at the distance of 65 "miles from the beginning; from Tennessee river to the

"main ridge and along the extreme height of the same to the place "where it is called the Unakoi or Unaka mountain, striking the old "trading path from the valley towns to the overhills towns," &c. This is the wording of the Code of Tennessee. The extreme height of the main ridge is the dividing ridge that divides the creeks.

Q. 76. Does the code say anything about dividing waters?

A. No, sir.

Q. 77. Now, Mr. Hale, is it not a fact that when you leave the point where the red line leaves the black line and starts out on this circuitous route that you are then on top of the main ridge?

A. Yes, sir.

Q. 78. In leaving the main ridge at that point do you not have to go down into a hollow or valley much lower than any part of this main ridge?

A. You have to go off down an abrupt, steep side to follow the main ridge not leave it.

Q. 79. And you have to cross a valley a quarter of a mile along to continue to follow what you consider the main ridge, and then ascend another big ridge?

A. You do not cross any valley—you pass through a gap in the main ridge.

Q. 80. Is it not a fact that the only reason you have for leaving the top of that high ridge which is known as the State ridge and making that precipitate descent into that gap and then climbing another ridge beyond there is that you are attempting to go around the water divide that is made by the ridges in this loop made by the red line?

A. Yes, sir, but what you call another ridge is simply a high point on the same main ridge.

Q. 81. Now, Mr. Hale, is it not a fact that if you follow the red line seeking the water divide that you are up one tall mountain or ridge like a sugar loaf and then down into a valley and up another all the way around it?

A. Yes, sir, you pass from one high peak into a low gap and then another peak and another gap and so on all around.

Q. 82. Is it not a fact that those high knobs are more like a separate mountain than a continuous chain of mountains with slight depressions in the top as is usually found in a continuous mountain range?

A. No, sir; I have passed along ranges of mountains that had more abrupt tops, breaks and deeper gaps than that ridge and they were considered main ridges.

43 Q. 83. Is it not a fact that when you leave this main ridge called the State ridge which you admit at the point where you leave it is the true line that you strike off in a direction at right angles with call given in the code, and don't this general direction continue at right angles with the calls given in the code for about five miles?

A. No, sir, the angle is not as large as a right angle from the call

given in the code. I mean the angle between the State ridge and the divide.

Q. 84. You mean that the angle between the State ridge which continues in a westerly direction and the water shed which turns the water into the Telico river, being the route that you take and claim to be the State line is not a complete right angle?

A. Yes, sir, that is what I mean.

Q. 85. The course given in the code is a southwesterly direction. Now when you leave the well defined State line on the top of the State ridge and strike out on the line that you claim to be the State line don't you go nearly in a southeasterly direction for about four or five miles?

A. About south southeast I should say for two to two and a half miles; then nearly south for two to two and a half miles; then you turn nearly west for two or three miles; then south west for a mile to a mile and a half; then nearly west for about three miles.

Q. 86. Now, I will ask you this: If, instead of turning down that precipitate ridge in order to get off the State ridge into the hollow and then ascending one of the peaks south of there you will continue down the top of the State ridge; will you not thereby get the course called for for about five miles approximately in a straight line to the Telico river?

A. Yes, sir.

Q. 87. This State ridge from the point where you leave it to the Telico river is a continuous unbroken well defined ridge is it not?

A. It is a continuous ridge broken by a sharp top which rises higher than the Hog Jaw gap called Grassy top, and then it slopes down almost continuously with some slight rises to the river.

Q. 88. After going into the river it immediately ascends and makes one continuous ridge up to the point where you come back to this ridge does it not?

A. No, sir.

Q. 89. How is this black line then which is a continuation of the State ridge, being broken there by the Telico river, to the point where you strike the same ridge again as to its topography?

A. The point of Jenks ridge comes down to the river
44 about half a mile south or rather south east of the point of the State ridge. With reference to the black line going south west from the river you ascend a spur for about a quarter of a mile; then turn south east across a branch and up flat side of the Jenks ridge, probably an eighth of a mile to the top of Jenks ridge, then up the Jenks ridge to the divide, a mile and a half from where the line first tops the Jenks ridge?

Q. 90. When you leave Telico river after having come down the State ridge don't you ascend spurs sloping down from the Jenks ridge up to the top of the Jenks ridge and is not this spur in fact a part of the Jenks ridge?

A. I suppose it is; I never went up the spur to where it leaves off from the Jenks ridge or whatever ridge it may leave.

Q. 91. Then when your two points come together on the Jenks

ridge you will have left all of the disputed line and both lines run together from there on?

A. No, but both lines run together from Jenks knob S. W. Jenks knob, in a point on the main ridge.

Q. 92. Now, I want to ask you another question or two in reference to the mountains or ridges that you say is the State line. How far when you leave the top of the State ridge do you descend before you commence to rise again?

A. About a quarter of a mile, horizontal measure.

Q. 93. Then you go entirely down off of the State ridge before you commence to ascend the mountain on the other side?

A. No, I can not say that. The divide puts off on the side of the State ridge, high up on the side of the ridge.

Q. 94. Now it is a quarter of a mile from where you leave the State line on top of the State ridge down the side of the ridge before you commence to ascend any ridge as I understand?

A. Yes, sir, before you commence to ascend any point on the ridge; you are still on the ridge—Mitchell licks is simply a gap in the ridge.

Q. 95. Standing at the point where you come down off the State ridge into that hollow and looking the region over to the westward and southward, does not the country appear in such manner as to lead the observer to the conclusion that there must be some kind of a water course in the valley into which you are descending—I mean to the observer who is not familiar with the country?

A. Yes, sir; standing at the point called the County Corner on this map, Exhibit "H" and looking south you would scarcely recognize that there was a divide put off there. If it was in the summer season and the foliage on the trees it would take very close observation to tell that there was a divide there; in the winter time it could be told more readily.

Q. 96. You mean then that in simply looking down, when you go the way the red line is marked on this map, that it would look to an observer who was not familiar with the country like you were leaving the State ridge entirely?

A. Yes, sir.

Q. 97. Continuing westward on the State ridge from this point would look like the natural course to pursue would it not?

A. Yes, sir.

Q. 98. Strangers traveling on the State line until this point is reached, marked on this map as the County Corner, and wishing to pursue the main ridge would naturally continue down the top of this main ridge towards Telico river would they not?

A. They would naturally continue down that State ridge for maybe a mile before it would be discovered that they were simply on a spur of the main ridge.

Q. 99. That is just your idea that it is a spur?

A. No, sir, it is my knowledge.

Q. 100. It runs for five miles to the river does it not?

A. No, sir; four miles.

Q. 101. You have stated in a former part of this deposition that this ridge known as the State ridge from Laurel top on down to the Telico river as set out by the black line here on this map and upon which is marked "Red Log gap" and "Bryson killed" according to tradition was the ridge run by the commissioners in laying off the State line—am I correct in this?

A. I think I stated that tradition said that the commissioners went down that ridge.

Q. 102. Now, I want to ask if tradition says those commissioners ever ran the red line as marked on this map forming a line in the nature of a half circle, as the State line?

A. No, sir; not that I ever heard of.

Q. 103. In leaving the top of the State ridge going down into that valley southward or south easterly and then striking the high tops or peaks along around this red line where you conclude the State line is or should be, did you find any marks made by the commissioners?

A. None that I could recognize and swear to.

Q. 104. In recently running a continuation of the line from Laurel top as marked on this map to where the red line diverges on the map going southward on down the top of the State
46 ridge to the Telico river did you find it marked with the marks provided by the statute for State line marks?

A. I found that kind of a mark as provided by the statute but it don't bear the age for State line marks; I found the marks that I supposed were made by McClellan in '93.

Q. 105. Is it not a fact that by cutting out blocks in trees where marks were made that the age of those marks could be clearly ascertained?

A. Yes, sir, where they are cut in the wood.

Q. 106. What is the cutting out of the blocks on trees called in surveyors' parlance?

A. Blocking or juggling.

Q. 107. Did you juggle or block any of these marks that you found on this line on top of the State ridge?

A. None of the recent marks. I blocked a large mountain oak that bore indications of State line mark. In my blocking I found it was not a State line mark.

Q. 108. How old was it?

A. My recollection is it was 72 years old—the tree has been dead about a year, making 73 to my best recollection.

Q. 109. What did you do with that block?

A. Left it lying at the root of the tree.

Q. 110. Who was with you on that occasion?

A. O. W. Muller and a man named Sherman Clayton.

Q. 111. Do you know how long that tree had been dead?

A. I think about one year.

Q. 112. Do you know that as a fact?

A. No, sir, but to the best of my judgment it had not lost two summers' growths.

Q. 113. Is the fact that this mark appeared to be only 72 or 73 years old the only reason that made you conclude that it was not a State line mark?

A. No, sir.

Q. 114. What are the others?

A. When I blocked the tree to the mark—juggled it out—instead of finding two hacks and a blaze only found a very long blaze about 12 inches long, while the blaze of the State line mark is from four to six inches, seldom finding as long as six inches.

Q. 115. Is that for a fore and aft or side line tree?

A. Fore and aft.

Q. 116. This tree that you juggled was it a fore and aft or a line tree?

A. Fore and aft—the indications and marks were on the tree as if it had been marked fore and aft and when we juggled it
47 we decided that it had not been marked with the State line mark.

Q. 117. Did you see any other old marks on that line or juggle any?

A. I saw a large mountain oak standing in a gap with three hacks on the south side of the tree, which would appear as if it was a side line tree marked with three hacks; but I do not think this is a side line mark from the fact that the marks are broad or long rather as if made with a broad blade axe.

Q. 118. Did you juggle it to see its age?

A. No, sir; the hacks I did not think had gone to the wood and juggling would not have proved anything.

Q. 119. You could not tell that unless you juggled it could you?

A. Yes, you can generally tell by the appearance of the mark in the bark whether or not it had been cut to the wood.

Q. 120. There is one thing dead sure in regard to these particular marks is there not and that is that they were made long before McClellan went along there?

A. Yes, sir.

Q. 121. How many other such marks did you discover along down that line to the Telico river?

A. I think that is all; I do not remember any others.

Q. 122. When you went to North Carolina in 1891 or '92 with the officer who went there to put Jasper Fain out of possession of the land, did not he show you a juggle that had been taken out of a chestnut or chestnut oak on the State ridge along down on this disputed line?

A. I do not remember that he did.

Q. 123. Did you ever see such a juggle in the possession of Jasper Fain?

A. Do not remember that I did.

Q. 124. Didn't you tell Jasper Fain after discussing the matter with him on that occasion that you believed that the State line was on that ridge?

A. Don't think I did.

Q. 125. Will you say that you did not?

A. No, sir; I will not.

Q. 126. It is very certain that after you went there as the agent of these complainants in '91 or '92 and had this talk with Jasper Fain that the complainants made no more attempts to take possession of the land that Jasper Fain was on until 1899, is it not?

A. I do not know it to be a certainty.

Q. 127. Don't you know that from Mr. Seymour and Mr. McCroskey the counsel for these complainants?

A. No, sir, I do not know that either one of them ever discussed this with me.

48 Q. 128. Did you ever hear of any other attempt being made until this in 1899, at which time the officers were arrested by the authorities of North Carolina for trespass and assault upon Jasper Fain?

A. No, sir; I never heard of any attempt being made.

Q. 129. The acts of North Carolina and Tennessee of 1821 describing the line between these two States reads as follows: "Beginning "at a stone set up on the north side of the Cataloocha Turnpike "road and marked on the east side N. C. 1821, and on the west side "Tenn. 1821; running thence a southwesterly course to the Bald "rock on the summit of the Great Iron or Smoky mountain and "continuing south westwardly on the extreme height thereof to "where it strikes Tennessee river about seven miles above the old "Indian town Talassee crossing Porter's gap at a distance of 22 "miles from the beginning, passing Meigs' boundary line at 31 and "½ miles, the Equinetty path at 53 miles and crossing Tennessee "river at distance of 65 miles from the beginning, from the Ten-"nessee river to the main ridge and along the extreme height of "the same to the place where it is called Unacoy or Unaka mountain "striking the old trading path leading from the valley towns to the "overhills towns near the head of the West fork of Telico river at a "distance of 93 miles from the beginning." Now, I will ask you to calculate the distance between the beginning point named above, by adding the distance between the beginning point and the Tennessee river, being 65 miles, to the actual survey of the line as claimed by these defendants, running down the main ridge which is known in that country as the State ridge to the Telico river, and thence to the Unaka Turnpike road, and state the distance?

A. One hundred and five-tenths miles from the Cataloocha turnpike.

Q. 130. Now, make the same calculation and show the distance between these points in the same manner if you come around the loop as made by you and as shown by the red line on this map from which you are testifying?

A. One hundred and six and eighty-five hundredths miles.

Q. 131. Then if the line that defendants claim is the true line is adopted the distance is within a half mile of that designated by the code is it not?

A. Yes, sir.

Q. 132. If the line claimed by the complainants is adopted then the distance around that line is nearly six miles longer than the distance designated in the code is it not?

49 A. Yes, sir.

Q. 133. Do you know O. W. Muller?

A. Yes, sir.

Q. 134. Do you know whether he ever ran these disputed lines or not?

A. Yes, sir.

Q. 136. Did he run them more than once?

A. Not that I know of.

Q. 137. When did he run them to your knowledge?

A. He was with me in October, 1899, and ran down the State ridge with the McClellan line; and in '96 he was with me when we went around the head of the river.

Q. 138. Was he your assistant or you his?

A. Well we were joint surveyors.

Re-direct examination by Mr. SEYMOUR:

Q. 1. Explain further referring to your answers to cross questions how the ridge leading to Grassy spur or knob and on which the McClellan line runs leaves the main mountain ridge?

A. The Grassy knob is on the McClelland line about ¼ mile southwest of the undisputed State line and at the head of what is locally known as the Rough ridge. The McClelland line (running S. W. from Laurel top) follows down the top of a high ridge and at Hog Jaw gap passes the head of the main ridge and continues on down the spur called State ridge passing the head of Rough ridge at Grassy top.

Q. 2. How does the Hog Jaw gap compare in depth and extent with other gaps on the undisputed State ridge?

A. In going north east from Hog Jaw gap one would pass over Laurel top and into a gap that is longer but much higher or shallower than said Hog Jaw gap. Then over Haw knob and down into a gap at head of Roaring branch near the old Whig camp. This gap is about as deep; that is at about the same elevation, but is much longer between the tops that form the gap—and still farther north east there are many other gaps that are as well and even better defined and deeper, many that are not so deep nor bounded by as high tops, making this about an average gap, or maybe not as deep as the average.

Q. 3. What waters does the Code of Tennessee description of the 1821 call for crossing?

A. The calls from Catalooche road crossing Tennessee river and Hiwassee river to the Georgia line.

Q. 4. Does the State line between these points cross any other water?

50 A. There are none others called for in the description, therefore I surveyed across no other.

And further deponent sayeth not.

W. D. HALE.

Sworn to and subscribed before me this January 3d, 1900.

[SEAL.] NORMAN B. MORRELL,
Notary Public.

Bill of Costs.

Notary two depositions	2 00
O. W. Muller, witness:	
Mileage 192 miles, two days at 1.50	3 00
W. D. Hale, witness:	
Mileage 90 miles, two days at 1.50	3 00
Total	$8 00

NORMAN B. MORRELL,
Notary Public.

Endorsed: Depositions of Oscar W. Muller and W. D. Hale. Filed Feb. 16, 1900. J. T. Carter deputy clerk.

In the United States Circuit Court for the Northern Division of the Eastern District of Tennessee.

HUGH STEVENSON ET AL.
vs.
JASPER FAIN ET AL. } No. 1153.

The depositions of C. M. Watson, Jasper L. Fain, A. A. Fain, F. M. Lovingood, J. R. McClelland and Rufus Hunsucker, witnesses for defendants taken by agreement before S. W. Lovingood, clerk of the superior court of Cherokee county, N. C., in Murphy, at the office of said clerk in the court house at Murphy, it being hereby agreed that said depositions shall be taken before said clerk in his official capacity, who shall swear the witnesses before they depose, and shall certify the depositions after they have been typewritten out, and signed by the witnesses under a regular certificate to the depositions, under the laws of the State of North Carolina,
51 and when so taken and certified, the said clerk shall seal them up and forward them to the clerk of the United States circuit court at Knoxville, Tennessee, and the fact that said depositions were taken without commission from the U. S. circuit court at Knoxville, and before said clerk, and all other formalities are hereby waived, and said depositions when so taken and filed shall be read as evidence in said cause, subject only to exception for irrelevancy and incompetency, and shall not be excepted to for want of formal

certificate and proper officer to take the same according to the forms of the U. S. circuit court.

CHARLES SEYMOUR,
Sol. for Compl'ts.
GREEN & SHIELDS,
Sol. for Def'ts.

Said witness C. M. WATSON, being first duly sworn deposed and said:

Q. State your age and place of residence?
A. Forty two years old, live in Andrews, N. C.
Q. How long have you lived in Cherokee county?
A. Fourteen years and a half.
Q. Do you know C. A. Colvard, commonly called Cal Colvard?
A. Yes, sir.
Q. Is he living or dead?
A. He is dead.
Q. How long has he been dead?
A. Four years and three or four months.
Q. How long had you known him before his death?
A. About nine years.
Q. About what age was he when he died?
A. About 84 years old.
Q. In what county did Cal Colvard live?
A. In Cherokee county.
Q. Were you any relation by blood or marriage to Cal Colvard?
A. I am his son-in-law. I married his daughter.
Q. Do you know the heirs of Mercer Fain?
A. Yes, sir, I know Jasper L. Fain, and know pretty much all the Fain boys, that is about all.
Q. Did you have a conversation with Mr. Colvard in regard to the State line between Tennessee and North Carolina at a point where there was a dispute between Fain and others, as to the title of land lying on said State line?

52 Counsel for complainants except to the foregoing question because the same is irrelevant and incompetent.

A. Yes, sir.
Q. State what that conversation was and how it arose, as fully as you can?
A. About six years ago I met up with Mr. Jasper Fain going from here up to Mr. Hickerson, and on the way we were talking about his property out there and he said he was having some trouble about it in some way. Any way some body had come out there and tried to dispossess him, or something of that kind, and I went up to my father-in-law's and was telling him about it, and he told me to tell Jasper Fain to stand his ground, that he was right; that the State ridge was the line, then he went on to state about the

land. He said he was a lad or a boy, and was on the survey, he and an older brother of his, were on the survey. I supposed it was the State line survey from his conversations. He said that they camped somewhere under Laurel top, and they started out from there and went down what is now called the State ridge. I don't know what it was called then, to the Telico river and crossed the Telico river and marked a holly, and also said something about a spruce pine, but I don't remember where he said that was at, but they crossed over the river and marked a holly tree that stood on the west side of the river with a tomahawk. He was just a boy he said, and he went along and would climb a tree and wave a handkerchief for a signal from one place to another. He said that they would find marked with a tomahawk.

Counsel for complainants objects to the foregoing answer on the ground that the same is irrelevant and incompetent.

Q. Did he ever tell you that they ran the State line along there at any other place but down the State road?
A. No, sir, he never said anything about it.

Counsel for complainants objects to the foregoing question and answer, because irrelevant and incompetent.

Q. Are you any relation to Fain, or have you got any interest in this matter?
A. No, sir, I have no interest in it whatever.

Cross-examination waived.

And further deponent saith not.

C. M. WATSON.

Filed, Aug. 24, 1900.

I. J. CARTER,
Deputy Clerk.

53 JASPER L. FAIN, next witness, of lawful age being first duly sworn, deposed and said:

Q. What is your age, and where do you live?
A. I am 36 years old. I live in Cherokee county, N. C.
Q. Are you one of the parties to this suit?
A. Yes, sir.
Q. Are you familiar with the lands in controversy in this suit?
A. Yes, sir.
Q. How long have you known them?
A. I have been knowing them ten or eleven years. I have had charge of them for eleven years. I took charge of them eleven years ago, and have had charge of them ever since.
Q. Is your father living or dead?
A. He is dead.

Q. What was his name?
A. Mercer Fain.
Q. When did he die?
A. In March, 1893.
Q. Are you living on these lands in controversy?
A. Yes, sir.
Q. Did you move on to the lands before or after your father's death?
A. Before his death.
Q. I show you a map which is filed as Exhibit H to the deposition of W. D. Hale, and I will ask you to state whether or not you recognize this map as correctly setting forth the lands and disputed lines in controversy in this case?
A. Yes, sir; that looks correct.
Q. Please examine this map and indicate by a square, putting under it your initials, where your house is located on the land in dispute?
A. I do so.
Q. When was this house where you now live built?
A. It was built, I think, five or six years before I went there. I went there in 1889. The house was built by Mr. Hammonds who had taken two leases from my father. He went there under my father, and had taken two four year leases, and had been there eight years, and when I took charge there his last lease had expired.
Q. You may state whether or not at any time in the early nineties any one attempted to dispossess you of this land, and, if so, state in what case, and under what process, if you know, and also state who the parties were?
54 A. I reckon in 1893 (I know my father was living at the time), Mr. Hale came out there, and three or four others, it must have been in 1893; I am not positive when he came out there, but it was Mr. Hale, I don't remember the other parties, to dispossess me, and I told them I was in the State of North Carolina, and on my own land and my father's land. I don't know whether I knew it previcus to that time. He just wanted me to take a lease from them. I told them it was on my land and my father's land in North Carolina, and it was useless to talk to me.
Q. Was that W. D. Hale?
A. I could not tell about whether that was his initials or not. I believe he said his name was Bill Hale.
Q. Did they dispossess you?
A. No, sir.
Q. After Mr. Hale was at your place on this land, and wanted you to take a lease from him, were you further disturbed by any one trying to dispossess you, and, if so, state when it was and who it was that disturbed you?
A. On the 26th of April, 1899, Mr. Barr, Mr. Anderson and Mr. Metcalfe came to my place on that mountain and said they had come to put me out or to lease to me, and I told them I was in the State of North Carolina, and on my premises, and the premises of

the Fain heirs; that the State line run down that ridge and pointing in the direction of the State ridge, and if they would follow me to convince my statement, I would show them a plain marked line down that ridge. I believe they said they were not looking for lines or for nothing of that kind. I asked them to walk up to the house, set out chairs on the porch, drew one of these juggles which had been cut out from one of these marked trees on the State ridge by Mr. Lovingood, surveyor for Cherokee county, and Hyde, the surveyor of McMinn county, showed them the hacks, they looked at it and handed it back to me, and I stuck it back up over the joist on the porch, so I remarked to them: Gentlemen, if you are any ways chilly we will move into the fire. Mr. Anderson says I am a little chilly, I believe I will move in, and did so. They began to discuss then about putting me out or leasing me. Mr. Barr said Perhaps you have not explained everything fully to Mr. Fain. He went on to say, wanted to know if I was going to give them any trouble, that they had a writ of possession, I believe it was, to put me out, and wanted to know if I was going to give them any trouble or not. I says, Gentlemen, if that is your business I forbid you to remove or trespassing on my premises. I don't remember just how I spoke. I told them my premises is the way I spoke it, and he
55 wanted to know then if I was going to give them any trouble—Mr. Anderson was asking me this question. I says In what way—what do you mean? Mr. Anderson says Are you going to take a lease or get out. I says I am not going to take a lease, and I just simply forbid you from removing anything off of these premises; I am in the State of North Carolina, on my own soil, and I am not going to take any lease. He says Are you going to give any trouble any way, and I says None that I know of. So he then began to call me out and wanted to see me and talk with me, and got me out to the spring, and I went out there one trip with him and come back to the house. Mr. Barr was still in the house, in the yard, perhaps, he was standing in the yard, as well as I remember. Shortly my man Mitchell came up into the yard, and he asked both of us to walk out to the spring—said he wanted to talk with us. We did so. While we were out there Barr walked in and took down my Winchester from the case I kept it in. We soon came back to the cabin. Anderson, Mitchell and myself came back into the cabin. As we entered Mr. Barr was standing about middle ways of my cabin with my Winchester, and says You have got a very nice gun, and I says Yes, that is a very nice gun. I stepped to the table where he had taken my cartridges down, lifted the lid from the cartridge box, took out a cartridge and held it up and says, And it carries a very good charge. He says, Yes. I dropped the cartridge back into the box; about that time Sheriff Barr started out of the house with my gun—like he was going out of the house. I reached out and says Sheriff I will take the gun, and reached out, perhaps, for the gun. He jerked the gun back and says, No, I will keep this gun. I says, What are you going to do with it, what do you want with it. He says That is all right about that. I turned to take my

seat. By the time I sit down and facing them again Barr and Anderson had their pistols on me. I said, Gentlemen, what does all this mean; what have you got your guns on me for; I have done nothing nor said nothing. I don't see why you have got your guns out here on me. About then, I believe, Anderson drew out a pair of hand cuffs and ordered Barr to put them on me three or four times. I rose to my feet and says, Gentlemen, I don't want those things on me. I have not done anything or said anything, and I don't want those things on me, and sat down again. My man Mitchell was standing on my left at the time and the doors were on the left, and Mitchell was standing between me and the door.

About that time a fellow by the name of Crow stepped in the
56 door and Anderson ordered both of us in his custody; says You can consider yourselves in my custody, and I says, All right, Mr. Anderson. Crow was standing in the door, and Mitchell between me and the door. I says, All right, and got up and walked out in the yard and sat down, and as I set down in the yard up stepped Metcalfe with a Colt's rifle on his shoulder, and handed Anderson a note, and Mr. Anderson shook hands with him, and it seemed to be a note of introduction. He then introduced Metcalfe to me. So I sat down there and while I was out there Anderson and Metcalfe were guarding me around there, Barr was taking out my household goods and loading them into a wagon. So they kept me under arrest there all the time that they were there until they were arrested, and never did discharge me. They kept me under arrest there for two days and nights.

Q. Did they get your stuff off of the place?

A. They didn't get quite all of it off.

Q. You say Anderson and Metcalfe were arrested. How were they arrested—under what process?

A. They were arrested, I suppose, for trespassing on a citizen of North Carolina.

Q. After they left, did you still remain in possession of the property?

A. Yes, sir.

Q. Are you in possession of it now?

A. Yes, sir.

Q. Who was Anderson and Metcalfe, and these gentlemen that you have been speaking of? Where did they come from?

A. They said they were from Monroe county, Tennessee.

Q. Do you know what case they had process in to dispossess you from that property?

A. No, sir, I do not, only they claimed they served a summons on me, I think it was in 1892 in the streets of Murphy, right down there. I do not know that I talked with them very much about it. They said that they had a writ of possession to come up and put me out. They didn't explain to me how it came about, or anything about it.

Q. So it is they did not get you out?

A. No, sir.

Q. Examine this map, Exhibit "H," to the deposition of Hale in this case, and state whether or not you have been over the red line which the complainants claim to be the true line between the States of Tennessee and North Carolina, and also over the black
57 line, which runs down what is known as the State ridge with the view to looking for marks, State line marks, on these two lines?

A. I have; yes.

Q. Have you been over them more than once?

A. I have been from the point marked "County Corner" on the State ridge along the red line to the McDonald bald on the red line. I have traveled over that off and on for eleven years, ever since I have been in the mountains. I have been over the black line down the State ridge every year for the eleven years since I have been in the mountains.

Q. Have you traveled over the lines with the view to locating the State line marks?

A. Yes, sir.

Q. State whether or not you have ever found any marks that were State line marks, or other line marks on the red line, commencing on the State ridge at the point marked County Corner, and running around that red line to McDonald bald?

A. No, sir; I have never seen any marks that indicated State line marks around on the red line.

Q. Is that red line marked at all?

A. No, sir.

Q. State whether or not you have ever been able to find any State line marks on the black line running from the point marked "County Corner," down the State ridge to the Tellico river, across the Tellico river to the point where this red line on the map, which complainants claim to be the State line, intersects on the top of the ridge there?

A. Yes, sir; I found a number of marks down this State ridge line. All the way it is a plain marked line down the State ridge, and across the river here stands a holly marked "86–M," the 86 in figures and a large "M." Just above the holly stands a spruce pine marked with three hacks, a side line.

Q. After you cross the Tellico river, and after you pass this holly that is marked "86–M," are there any other State line marks on up to where the two disputed lines intersect?

A. I have never looked beyond. I have never been over there with the view to locating the State line trees except last fall I was along there and I found a couple of chestnuts along there above the holly that resembled State line marks; then an oak standing on the top just beyond where the red line and black line intersect, marked with a State line mark.

Q. State whether or not the spruce pine which is just
58 westwardly from the holly, that you have spoken of, is marked as a State line tree?

A. It looks just like the balance of them.

Q. How is it marked?

A. It is marked with three hacks.

Q. What does that indicate in reference to State lines?

A. It indicates a side line tree of the State line. At Red Log there is a poplar marked fore and aft—marked with two hacks and a blaze.

Q. What do two hacks and a blaze indicate?

A. Fore and aft. It means a fore and aft State line tree.

Q. You say that you have examined the red line beginning at the point called "County Corner" on the State ridge and then running southward to McDonald bald for State line marks?

A. I have examined it clear around for State line marks, and a number of times from the county corner to McDonald bald, and did not find any.

Q. Then you have examined this entire red line to find out whether there is any State line trees on it?

A. Yes, sir.

Q. And you say you did not find any at all?

A. I did not find any at all.

Q. How many trees marked as State line trees did you find from the point on the State ridge called County Corner, running thence to the Tellico river, and then to the intersection of the two disputed lines?

A. Between twenty and twenty-five that shows plainly, and several that I think is State line marks, perhaps shows one or two hacks, but not all three of them.

Q. State the appearance as to age of these trees that are marked with the State line mark along down the State ridge to the Tellico river, and thence to the intersection of the two disputed lines?

A. They are very old and a good many of them, all kinder covered with moss, and the hack seems to be one inch and a half or two inches long. Some of them seem to be a little bit longer, and some not quite so long—the different timbers you know. I think they are a little shorter on the chestnut than they are on the oak, but they all look to be the same age.

Q. Were you along with McClelland when he made that survey to find the State line?

A. I was along with him part of the time, that is he came to my cabin one evening and asked me to go with him to find the holly.

59 He wanted me as a kind of a pilot to the holly. We started out the next morning. His surveying corps was camped at Beaver Dam bald. We went on cross down the State ridge, crossed the river, and coming up a little ways from the river two or three hundred yards, or something like two hundred and fifty yards, we found the holly, and we went on out to where the corps of surveyors were camped. He then joined his surveying corps, and then started on the line, and I staid with them that day and came back to my cabin that night.

Q. What holly is it you speak of finding and on which side of the Tellico river was it?

A. It is this holly tree that stands on the west side of the Tellico river and is marked "86-M."

Q. State whether or not these State line marks that you say are to be found along down the State ridge to the Tellico river and thence on westwardly, were on the trees there when McClelland made his survey?

A. Yes, sir; they were there when he made his survey. We found several of them at that time and since then I have found a great many more. He hadn't time to look—couldn't put in very much time looking, but found several trees while he was running the line, and since then I have found a great many more.

Q. What was the appearance of these hacks when McClelland made his survey as to age?

A. Very old. I saw three or four juggles taken out of these old marked trees down the State ridge. Saw Lovingood and Hyde take out the one I spoke of while ago, and saw McClelland take out one, and a fellow by the name of Wilson and myself took out one, and we found one there that had been taken out by Mr. Hale. I saw him the evening before, upon the mountain there above my ranch, and the next morning I had an occasion to go down the State ridge, and he and some one had juggled a tree down there, and I supposed it was him and Hale; it was a fore and aft juggle.

Q. Had it been recently cut out?

A. Yes, sir.

Q. What kind of a tree had it been cut out of?

A. An oak tree—stood centerably on the top of the State ridge. I had looked at the marks several times before.

Q. Was the tree alive or dead?

A. It was dead and looked like it had been dead ever since McClelland had made his survey on the State ridge. His marks didn't seem to be grown over at all. These old hacks were very old. It looked like the tree died about the time or shortly after McClelland run his line, as McClelland's hacks didn't seem to be grown over scarcely at all.

Q. Did you get the juggle that had been cut out of that tree?

A. Yes, sir, and brought it to Murphy and put the date on it at the time I got it.

Q. What did the marks on this juggle indicate?

A. It indicated fore and aft State line tree.

Q. What age did the marks show by the growth of the timber?

A. 73 years, I think. I think it was 73 years—72 or 73 any way.

Q. You say that the marks put on there as State line marks, and which you assumed to have been put on there by McClelland when he made his survey had not grown over at all?

A. No, sir; it looked like it was dead when he put them there. From the looks of his marks it looked as though the tree was dead, or about dead, when he put them there.

Q. When did McClelland make his survey?

A. I don't remember. It was in 1893, I believe.

Q. You have stated, I believe, that you have seen or assisted in

taking out other juggles on this State line ridge between the point marked County Corner and the Tellico river?

A. Yes, sir.

Q. When did you take out those juggles?

A. It was that fall when Wilson and I were out at Bryson gap—took it out of an oak, which showed the exact age of the survey of the State line.

Q. Where did you find that tree?

A. At Bryson gap, on top of the State ridge.

Q. I see on the map a mark "Bryson killed;" is that Bryson gap?

A. Yes, sir.

Q. How far is Bryson gap from the point marked Bryson killed on the State ridge from the point marked County Corner?

A. I can't tell just exactly. It is three miles, or very near. There is a mile mark just above my cabin on the State ridge, and it is called three miles from my place to the river here.

Q. When did you take out the juggle at Bryson gap?

A. October 14th, 1899.

Q. Was that a fore and aft tree or a State line tree?

A. State line tree.

Q. What does the growth of the tree show as to the age of this State line mark on it?

61 A. It shows to be 78 years old the way I counted it—78, I believe.

Q. State whether or not it shows that the marks were made on this tree in 1821?

Counsel for complainants objects to the foregoing question on the ground that the same is irrelevant and incompetent.

A. Yes, sir.

Q. Have you in your possession the juggle that was gotten out by Hale or which you found recently cut out on the State ridge on the day that Hale passed down this line in 1899?

A. Yes, sir.

Q. I will ask you to file that juggle as Exhibit "A" to your deposition?

A. I so file it.

Q. Indicate on this map where the juggle was cut out of the State ridge by Hale, and which you have filed as Exhibit "A" to your deposition?

A. It was cut out somewhere between the Red Log gap and the Bryson gap, the place where Bryson was killed on top of the ridge, which is shown by the map, and represented a fore and aft tree.

Q. The witnesses who have testified for the complainants in this case both state that there is no doubt but that the true State line between Tennessee and North Carolina runs along the top of the State ridge from Laurel top to the point marked County Corner, and they both state that the dispute as to where the true State line is, begins on the top of the said ridge at the point marked County Corner.

You may state whether there has ever been any dispute as to the fact that the true State line is on top of the State ridge from Laurel top to the point marked County Corner?

A. Yes, sir; that is the true State line.

Q. Standing at the point marked County Corner and looking for the main ridge, I want you to state from that point westwardly which is the main ridge?

A. This State ridge on down towards Tellico river running in a southwesterly course—this black line.

Q. How near to the Tellico river does this State ridge run before it begins to fall off or break off into the Tellico river?

A. It begins to break off about three-fourths of a mile from the river.

Q. Does it break down into the Tellico river suddenly or gradually?

A. It breaks down very abruptly and crosses and makes up very fast on the other side—on the west side of the Tellico river.

62 Q. State whether or not in following this distinctly marked State line down the State ridge to the Tellico river and crossing the Tellico river there is any continuation of this ridge on the westerly side of the Tellico river?

A. Yes, sir; you go down the State ridge, cross the river, and the ridge on the west side points right in exactly opposite the ridge on the east side and makes up very fast on the west side.

Q. When you get to the Tellico river do you have to go either down the river about a half a mile or up the river about a half of a mile to find a continuation of that ridge? The witnesses for the complainants so testified. How is that fact?

A. No, sir; there is one bank of that ridge that makes in I will say five or six hundred yards up the river above where the State line crosses the river. This ridge kinder forks, and one prong goes in just exactly opposite the State ridge, and the other prong makes into the river about 600 yards above where the State line crosses the river.

Q. Then, as I understand your testimony, when the State ridge breaks down so as to let the Tellico river pass through, it immediately makes up immediately opposite on the other side of the river?

A. Yes, sir.

Q. Standing at the point marked County Corner on the top of the State ridge, and then following the red line on that map, which the complainants claim to be the true State line, is there any spur of the State ridge that that red line would run down?

A. Not at the county corner where they claim the State line turns—there is no spur at all. It looks as though there was a stream running through there, just a smooth side of a mountain.

Q. Standing at the county corner on top of the State ridge, and looking for the main ridge, where would you go westwardly?

A. I would go down the State ridge.

Q. State the distance from the top of the State ridge at the point

marked County Corner, following the ridge line down to the bottom of that valley?

Complainants, by counsel, object to the foregoing question because immaterial, irrelevant and incompetent.

A. 1400 feet is Mr. McClelland's measurement. I was with him when he made the survey.

Q. What is the perpendicular descent from the point
63 marked "County Corner" to the bottom of the valley there?

A. 410 feet.

Q. Then in order to follow the red line in leaving the top of the State ridge and going down the red line, as I understand your testimony, you would simply go down the side of a mountain, without any spur to guide you, 1400 feet with a perpendicular descent of 410 feet, in reaching the bottom of that valley—is this correct?

A. Yes, sir.

Cross-examination by Mr. SEYMOUR, sol. for compl'ts:

Q. Do you not follow the divide of the waters in going from the county corner to the Mitchell licks?

A. Yes, sir, you follow the divide of the waters between Tellico and Snowbird when you are going down that 1400 feet—when you get down to the Mitchell licks that divides the waters.

Q. In order to get on what you call the State ridge from the county corner is it not necessary to ascend up over the Grassy spur?

A. I don't know anything about the Grassy spur.

Q. Did you not from the county corner, in following the State ridge, ascend to higher ground before you get down to Tellico river?

A. Yes, sir.

Q. How far is the highest ground from the county corner?

A. I don't know. I reckon near a half of a mile.

Q. You refer in your testimony to leases from your father to Hammonds. Were those leases in writing?

A. I don't know. I just heard my father speak of leasing to Hammonds.

Q. You have no personal knowledge of them except your father's statement?

A. Only what I heard him say.

Q. You never talked with Hammonds on the subject?

A. Yes, sir, Mr. Hammonds at one time, when I took charge there—he had a little stuff there and a hog. He says I owe your father for a little on range, and he says I want to let you have that hog, and perhaps some cooking vessels, and will just settle for that.

Q. Your father owned a large boundary, some twenty or thirty thousand acres of land in Cherokee county?

A. Yes, sir.

Q. How much land did he own adjoining the land in dispute on the North Carolina side of the black line, indicated on the map?

64 A. I don't know just how much. I suppose near three thousand acres.

Q. Who was Bill Hammonds—was he W. H. Hammonds?

A. He lived in the lower end of Cherokee county.

Q. Wasn't it W. H. Hammonds who had property down on the Hiwassee river?

A. I don't know that I knew his initials. He had some property down there. It was the same Hammonds that sold the property to the Apalachian Lumber Co. He lived on the north side of the Hiwassee river.

Q. Don't you know he used to live in Tennessee?

A. No, sir, he lived in Cherokee county.

Q. Hammonds was a cattle herder on a large scale, wasn't he?

A. He was in the cattle business, he and Tim Roberts together for a while.

Q. Is Hammonds living or dead?

A. He is dead.

Q. Wasn't it W. D. Hale whom you referred to McCroskey's agent in care of the Tipton lands in Monroe county?

A. I don't know, sir.

Q. Did you not hear of the Tipton and what are now called the Heyser lands, being in Hale's special care in that vicinity?

A. No, sir. I don't remember of ever hearing it.

Q. You know who the Heysers are?

A. No, sir, I would not know one of them if I should meet them.

Q. You stated that you were held under arrest by Anderson, and that in turn he was arrested. State what time of the day or night it was that he was arrested and you relieved from custody.

A. They never did release me from custody, and it was on the morning of the 28th of April, 1899, between three and four o'clock in the morning, that they were arrested.

Q. That effected your release, did it not?

A. I don't know, sir.

Q. You have not been under any duress since?

A. Anderson told me I was not released—he says, You are still in my custody; that was when they were starting off to Murphy with them. I says All right, I will be in. I believe that is all that was said about it.

Q. But you have not been interfered with and have not been under bond?

A. No, sir.

65 Q. At that hour in the morning were you up when the arresting party took possession of Anderson and his men?

A. I wasn't up when they first came up, but was called up by some one of the sheriff's posse, perhaps Sheriff Martin. I wasn't up. We were all in bed.

Q. How long did you stay at Murphy when you went there with the men on the morning of 28th of April?

A. I didn't go into Murphy until that evening—late on the evening of the 28th of April, 1899. I don't remember—I was here sev-

eral days. I don't remember how many days. I didn't have any trial—I went back to my ranch and then came back on the 7th, I think, of May, and started to Asheville on the 8th of May.

Q. What title paper did you have, Mr. Fain, covering the house and fields where you were when the marshals appeared?

A. I was claiming under a State grant from the State of North Carolina.

Q. Will you file a copy of your grant from the State of North Carolina as Exhibit "B" to your deposition?

A. Yes, sir.

Re-examination:

Q. You have been asked to file copies of the title paper under which the defendants in this case claim title to the land in dispute. How do the present owners of the land claim title to the same?

A. Claim it under a grant given by the State of North Carolina to M. Fain.

Q. Then you and the other defendants in this case are the children of M. Fain, deceased?

A. Yes, sir.

Q. Did he die testate or intestate?

A. He died intestate.

Q. I will ask you to file as Exhibit B to your deposition a certified copy of the grant to M. Fain from the State of North Carolina for the land in litigation in this case?

A. I will do so.

Q. Now I will ask you to state whether or not the ranch you have been living on since 1889 is located on the land covered by this grant?

A. Yes, sir.

Q. State whether or not when you were arrested by Murphy L. Anderson and others you were ever taken off this land by them.

A. No, sir.

Q. They were arrested before they removed you from the lands, and they left you on the lands, as I understand?

66 A. Yes, sir.

Q. You have spoken in your deposition of some kind of process having been served on you from some court in 1892, or 1893, with reference to this land. Did you own the land at that time?

A. No, sir.

Q. Who did own the land at that time?

A. My father.

Q. He was then alive, wasn't he?

A. Yes, sir.

Q. Was he made a party to that suit?

A. No, sir.

Q. Previous to the time that you were served with process in 1892 or '3, had your father been in possession of the lands or any part of

them covered by these grants that you have filed as exhibits to you deposition?

A. Yes, sir.

Q. When did you first become acquainted with this section o the country where this disputed land lies?

A. I reckon it was in 1889—that is when I first went there an took charge.

Q. What was this ridge that is marked on the map State ridg known as when you went there and took possession of the land i 1889?

A. The State ridge.

Q. Why was it called the State ridge?

A. Because that State line run down there, and it was marked al the way down the ridge with State line marks.

Re-cross examination:

Q. Under what claim of right did you first go on that land?

A. I went there as my father's tenant. He gave me permissio to go there.

And further said not.

JASPER L. FAIN.

Filed August 24th, 1900.

J. T. CARTER,
Deputy Clerk.

A. A. FAIN, next witness, of lawful age, being first duly sworn deposed and said:

Q. State your age and place of residence.

A. My age is 33, and live in Cherokee county, N. C.

Q. You are one of the defendants in this action?

A. Yes, sir, and an heir of M. Fain.

67 Q. Were you ever along the State line from the Unak turnpike to the Tennessee river?

A. I have been along most of it, part of it I have not been along I have been along the line from the Unaka o Unicoi turnpike t the Whig cabin, which is about a mile and a half from Laurel top

Q. Have you been along the State line embracing this disputed boundary?

A. Yes, sir.

Q. When were you along that line from the Unaka or Unico turnpike to this point you designate as the Whig cabin?

A. In the year 1893, in the fall, I believe it was.

Q. Please state what indications, if any, you found along tha line, of the State line having been run and established there?

A. We found marked trees, very old marked trees, indicating th State line marks as designated by the two States; we also found distance to correspond exactly with the Codes of Tennessee an

North Carolina running along what is known as the State ridge. We found all that we could hope to find to locate and establish the line. We also found trees marked with proper marks and indicated the proper age and the distance.

Q. Who was the surveyor you were with?

A. J. R. McClelland, a resident of this county.

Q. Do you know why he was tracing that line, or attempting to trace it?

A. Yes, sir, he was commissioned to do it—to trace the State line between the Tennessee river and the Unicoi turnpike. He was doing it under the governor's orders.

Counsel for complainant objects to the foregoing question and answer on the ground that the governor's commission or some record is the best evidence of his commission.

Q. Then you were along with McClelland?

A. Yes, sir.

Q. In this disputed territory where did you find the line marked?

A. We found it marked running along the State ridge crossing the Tellico river and kept up the State ridge. We were running backwards on it.

Q. Before you got to the Tellico river in this disputed territory, state what you found marked on the west side of the Tellico river.

A. Going in a northwesterly direction on the northwest side of the Tellico river—I don't recollect exactly how far from the river, three or four hundred yards is my memory—we found a
68 plainly marked holly, marked "86-M"—plainly marked. We found different kinds of marked trees along up the ridge, the State ridge. I don't remember the different kind of trees. The trees were marked with three hacks, part of them—part of them were marked with two hacks and a blaze, indicating fore and aft State line trees, corresponding to the State line. All the line was marked with the same mark.

Q. Do you know the character of country and the mountains at what is known as County Corner?

A. Yes, sir, I think I do. I have been over them several times.

Q. You have seen this map here, have you?

A. Yes, sir.

Q, What is the character of the country when you leave what you call the State ridge and go around this red line marked on this map?

A. After you get off the State ridge for some little distance, you began to ascend a broken ridge and low gaps. I know this to be a fact for over five miles, as far as I have been around that loop.

Q. Which is nearest to a ridge in surveying parlance—the State ridge or this loop represented by the red line?

A. The State ridge. The State ridge is a continuation of Laurel top. It is the same thing. There is no break in it. It is a continuation until it breaks off into the river.

Counsel for the complainants objects to the foregoing question and answer, because the same is incompetent and irrelevant.

After passing the Tellico river you strike what I have been told a point on the Jenks ridge, or one prong of Jenks ridge, immediately opposite the State ridge, it immediately ascends up a spur or a ridge just opposite of the main ridge, or Jenk's ridge.

Q. Tell me then, beginning back at the point designated as County Corner and on to Tellico river, and on up from Tellico river after crossing it to the place where this red line again connects, does that seem to be one continuous ridge, except as broken by the Tellico river?

A. Yes, sir.

Q. State whether or not this red line around the loop is any ridge at all, or is it a broken set of tops and low gaps?

A. It is a ridge, but it is very broken.

Q. Is it a main or leading ridge, or does it run off from the main ridge and lead around and then come back to the main ridge?

A. It breaks off from the main ridge, of the State ridge;
69 it does not change, does not connect with that divide designated by the red line with the main or State ridge.

Q. If you were at Laurel top or at county corner, and as a surveyor had instructions to follow the main ridge, would you go the black line marked here State ridge, or would you go the red line around this loop?

A. I would go the black line or what is known as the State ridge.

Q. Where does that black line or what you call the main ridge, lead you to?

A. It leads down the State ridge to the Tellico river, and one prong of the Jenks ridge to the Unicoi mountain.

Q. Do you know the difference in the distance from the county corner to the point called Bryson gap along the State ridge and around this loop?

A. I only know from surveyor's calls the distance of the loops, and I know by actual survey myself the distance from the county corner to where it drops to Jenk's ridge—that is down the State ridge. I only know the other distance from the calls of the surveyor.

Q. Please repeat what you said you found on the holly on the west side of Tellico river.

A. I don't remember how far it was from the river—not very far. There was on it the figures "86," and looked like they were six or seven inches long, and right under them the letter "M."

Q. Do you know how far that holly was from the Tennessee river?

A. I never measured clear to the Tennessee river. I don't know by actual survey.

Q. Do you know how many marks you found on this line called the State ridge?

A. I do not. We found several, but I don't know how many.

Q. What appearance did they have?

A. They had the appearance of being very old marks.

Q. Are you a surveyor?

A. I used to follow it. I have been a practical surveyor. I am not following it now.

Q. In standing at the place marked County Corner, Mr. Fain, and looking the way this red line diverges from the black line, the State ridge—what does it seem to be? Is there any spur leading off from that State ridge?

A. None whatever.

Q. Is there anything to indicate that that is the main ridge at all?

A. Not a thing. It shows to be the face of a mountain.

70 Q. As I understand you, Mr. Fain, you would — to descend from the side of that mountain or State ridge down into a hollow, and then begin to rise before you would get on to any ridge?

A. Yes, sir, and after you get down off the State ridge the ascent is very gradual. It is quite a distance there is no ascent. After you strike the low gap it gradually comes up. It is a low flat place in there.

Q. In standing at Laurel top and looking in a southwesterly direction, and to run a line in a southwesterly direction, which course would a surveyor or a stranger in that country follow, the red line or black line known as the State ridge?

A. He would follow the black line known as the State ridge. There is no other ridge to lead him off.

Q. Then from Laurel top, if he followed the main ridge, which way would he go?

A. He would go a southwesterly direction and follow a continuous ridge, or what is known as the State ridge right on across the Tellico river.

Cross-examination by Mr. SEYMOUR:

Q. The red line follows the divide of the waters around the head of Tellico river, does it not?

A. I suppose it does. It does part of the way. I have never been around there all the way.

And further said not.

A. FAIN.

Filed August 24th, 1900.

J. T. CARTER,
Deputy Clerk.

E. R. HUNSUCKER, next witness of lawful age, being first duly sworn, deposed and said:

Q. Where do you live?
A. I live two miles below Murphy on Hiwassee river.
Q. How old are you?
A. Going on 79.
Q. How long have you lived in Cherokee county, N. C.?
A. Ever since 1839.
Q. Are you familiar with the country surrounding the country in controversy in the case of Stevenson *vs.* Fain, shown by the map marked Exhibit "H" to the deposition of Hale to be in this pocket here between a red mark on the map running around the water divide, and the black line?
71 A. Yes, sir, I think I am.
Q. Have you ever been over these lines, and if so, state what you were doing?
A. I was hunting chestnuts and hunting game.
Q. Do you know a point on the ridge out there known as the Laurel top?
A. Yes, sir, I have been on it many a time. I have been from Laurel top plum to Tellico river.
Q. State whether or not there is a ridge or mountain running from Laurel top to the Tellico river.
A. Yes, sir, there is one ridge straight forward. There is no ridges makes off from it.
Q. What is that ridge known as?
A. It is known as the State ridge.
Q. How long has it been known as the State ridge?
A. Ever since I was in the country. I used to hunt with old man Graves out there and he was an old man when I was a boy or a young man, and he always called it the State ridge. I think old man Graves said he was with them when they run the State line.
Q. When who run the State line?
A. The lines between the two States, North Carolina and Tennessee, is the way I understand it.
Q. Why was this ridge running from Laurel top to the Tellico river, and then on the Jenks gap called the State ridge?
A. I reckon because it is between the two States.
Q. Why did you say it was known as the State ridge? Why was it called the State ridge?
A. Because it was betwixt North Carolina and Tennessee.
Q. Where did the State line run? Where was it said the State line run when you were a young man, and out there?
A. Started from Laurel top, and was one straight ridge down to the Tellico river.
Q. Was that called the State ridge?
A. That was called the State ridge.
Q. What becomes of this ridge when you get to the Tellico river?
A. The stream divides the ridge—it runs down to a point, the

water divides it, and then it strikes the Jenks ridge, and then it runs to the top of the mountain and goes on to Beaver Dam bald.

Q. State whether or not the State ridge ends at the Tellico river, or is it simply cut into by the Tellico river, and continues on westward from there?

A. It is cut into by the Tellico river. It runs on the State
72 ridge to the Tellico river, and then strikes the Jenks ridge and goes across the mountain to Beaver Dam bald.

Q. Is that ridge simply cut into by the river?

A. Yes, sir; of course it is.

Q. Do you know a place over there called the Mitchell licks?

A. Yes, sir; I know it well.

Q. State whether or not there are any spurs or branches of the State ridge that runs down into Mitchell licks?

A. No, sir; there are none. It is just a right straight flat section of the country, and you would be on the mountain and would think it was cut into by water, it is so level, and you go north a piece it begins to rise a little with that red line. You can plow it both ways for eight or ten acres then.

Q. Mitchell licks is just a valley then running off from the State ridge?

A. Yes, sir, it is right down there—just a basin of a thing.

Q. How long, now, do you think you have known the State ridge by that name?

A. I expect I have known it for fifty years.

Q. And who was the man that hunted with you that was older than you?

A. Old man Gray.

Q. And by what name did he call this ridge that is now known as the State ridge?

Counsel for complainant excepts to the foregoing questions and answers because the same are irrelevant and incompetent.

A. The State ridge.

Cross-examination by Mr. SEYMOUR:

Q. How long since you have been in that country?

A. Three or four months ago, I think about then.

Q. When did you go out there first?

A. My God, I can't tell you. I was a boy. I couldn't recollect that—couldn't near do that.

And further saith not.

E. R. HUNSUCKER.

Filed August 24th, 1900.

J. T. CARTER,
Deputy Clerk.

73 F. M. LOVINGOOD, being duly sworn, deposed and said:

Q. Where do you live and what business are you engaged in?

A. I live in Cherokee, N. C. I hold the position of county surveyor of this county.

Q. How long have you held that position?

A. I believe it has been about eighteen years with the exception of two years.

Q. I will ask you to examine the map filed as Exhibit H to Hale's deposition in this cause and state whether or not you know the country that it shows in reference to the State ridge and the lands in controversy in this cause?

A. Yes, sir; I think so.

Q. Do you know where the point on the ridge out in that neighborhood known as Laurel top is?

A. Yes, sir.

Q. What ridge is Laurel top on?

A. It is on this main divide here.

Q. Is it on the main ridge out there?

A. Yes, sir.

Q. In what direction does that main ridge run from Laurel top?

A. It runs a southwesterly direction. It runs down the State ridge down in a southwesterly direction, crosses the Tellico river into the Jenks mountains.

Q. I show you the point marked on this map as County Corner. Have you ever been to that point on this ridge?

A. Yes, sir.

Q. You may state whether or not there is any spur of the State ridge leading off southwardly upon which that red line could be marked?

A. None at all.

Q. After you leave the State ridge at that point marked County Corner to go down into Mitchell licks, is there any spur running down in there?

A. None that I ever saw.

Q. Then in order to get down into Mitchell licks you would just have to go down the flat side of a mountain, would you not?

A. Yes, sir.

Q. Does this State ridge end at the Tellico river, or does it extend on beyond that after the Tellico river runs through it?

A. I have always understood that the State ridge ended at Tellico river and from the Tellico river, and immediately opposite it, the Jenks ridge makes up and runs on up to the top of the mountain.

74 Q. Then after the Tellico river runs through the State ridge just opposite the State ridge on the other side of the river, there is another ridge running up to the top of the mountain?

A. Yes, sir.

Q. State whether or not but for the Tellico river breaking this

ridge, the State ridge, and the ridge beyond the Tellico river known as the Jenks ridge, would not constitute one continuous main ridge?

A. Yes, sir, it would.

Q. Have you ever surveyed the line running from Laurel top to the Tellico river down the State ridge to ascertain where the State line between Tennessee and North Carolina is?

A. Yes, sir.

Q. State whether or not in surveying that line you found the trees showing the State line marks?

A. Yes, sir.

Q. How many of them were there, and how were they scattered along down that line?

A. I don't remember the number of the trees I found marked, though quite a number along down the ridge. I blocked one out pretty near where Mr. Jasper Fain lived, and chopped one out near the river down there, a maple.

Q. Was this maple that you chopped out near the Tellico river?

A. Yes, sir; probably 15 or 20 steps of the Tellico river?

Q. Was it on a continuation of the State ridge?

A. Yes, sir, right at the drop-off, right next to the river.

Q. Could you tell from the growth of the tree and the marks on it what the age of those marks were?

A. No, sir; I couldn't give a correct idea, but it showed to our satisfaction to be very old. The growth of the tree would not give us sufficient information to tell, but we were satisfied in our minds that it was the same marks.

Q. Was it marked as a fore and aft tree?

A. It was a State line tree—three hacks.

Q. Crossing the Tellico river, what did you then find to indicate the State line?

A. Some two hundred yards west of the river we found a large holly. That holly was plainly marked 86–M, and near that holly was a spruce pine marked State line.

Q. State whether or not that spruce pine was marked with the line designated for State line?

75 A. Yes, sir—had three hacks.

Q. Were those trees there on the west side of the Tellico river on a spur of the Jenk's mountain, rising on up, corresponding with the line on the other side of the river?

A. Yes, sir.

Q. Do you know how far this holly marked 86–M stands from the Tennessee river?

A. Yes, sir. According to our measurement it is a little over twenty-one miles—a fraction over twenty-one miles.

Q. Did you block any other tree on this State ridge except the one near the Tellico river?

A. We blocked one right here close to where Mr. Fain lives on the State ridge.

Q. How far was that from the point marked on this map as the County Corner?

A. I don't remember distinctly, but I guess something like one mile—somewhere in that neighborhood.

Q. Then, as I understand you, this tree was on top of the State ridge about one mile westwardly from the point marked on the map County Corner?

A. Yes, sir.

Q. What did the juggle that you got out of that tree indicate?

A. It indicated the State line. It had been marked with three hacks and the growth of the tree proved to our satisfaction that it had been marked about the year 1821.

Q. Are you familiar with the growth resulting from land marks on trees so as to calculate the age of the marks?

A. I think so, sir.

Q. How much experience had you had in that particular?

A. I have chopped out quite a number of marks, and I don't know that I have had any particular experience more than in running out old lines. I have chopped out quite a number of marks to prove to my satisfaction the age of the mark.

Q. And you say that the growth of those blocks indicated that the line was marked with the State line mark in 1821?

A. Yes, sir; that was our decision in the matter.

Q. State whether or not you ever passed over the line indicated by the red line on this map beginning at the point on the top of the ridge marked the County Corner, and if so when did you pass along there?

76 A. I have not passed along this part of it in a great many years; I mean from the County Corner to McDonald bald. From McDonald bald to where it joins the State line, I have gone over that a number of times, but I don't remember as to dates.

Q. Did you ever examine that line as indicated by that red line for the purpose of ascertaining whether or not it had any State line marks on it?

A. Yes, sir.

Q. Has it any State line marks on it?

A. None that I have ever seen. I have never been able to find them if they were there.

Q. This ridge, known as the State ridge running from Laurel top to the Tellico river, is it a continuous ridge all the way down to the Tellico river?

A. Yes, sir.

Q. Is the ridge that springs up just opposite where the State ridge ends at the Tellico river and runs westerly, a continuous ridge out to Jenk's mountains?

A. Yes, sir.

Q. Do you know the distance from the point on that map marked County Corner to the Tellico river down the State ridge?

A. I think it is something over three miles.

Q. Is that State ridge level on the top, or up and down, as other chains of ridges?

A. I think it is a very smooth ridge on top.

Q. How far from the Tellico river does it begin to break down into the Tellico river?

A. I think three-quarters of a mile.

Q. Is the break down sudden or gradual?

A. I think it is tolerably gradual. It gets steep as the Jenk's ridge breaks down into the river.

Cross-examination by Mr. SEYMOUR:

Q. When you run your line from the Tennessee river, where did you start from?

A. We started at the mouth of Slick rock.

Q. Are there not three lines contended for at the Tennessee river at the north end of the river part of the line?

A. I don't know.

Q. Have you never surveyed any but this one?

A. No, sir.

Q. Did you ever hear of a line by the way of the Hang-over?

A. I think I have.

Q. Did you ever hear of a line by the way of the Fodder stack?

77 A. I don't remember that I ever did.

Q. You ran your line right up the valley of Slick rock did you?

A. Yes, sir, for some distance.

Q. Referring to the red line by way of the Mitchell licks; does that red line follow the water sheds, the divide between Tellico river and Snow Bird?

A. It seems to from the description on this map. It seems to run in that direction.

Q. Have you ever been on that part of the line?

A. Yes, sir; I have been around on the divide, but on this eastern part for a number of years.

Re-examination:

Q. Judging from this map and your familiarity with the country there, isn't it a fact that Mitchell licks would drain much territory for a mile or more east of the red line?

A. Yes, sir; I think so.

Q. That water would flow down into the Tellico river still?

A. Yes, sir; all along this southwest side.

Q. So that in order to get to the extreme divide of waters between Tellico river and Snow Bird creek, the red line would have to be moved back opposite to Laurel top, wouldn't it?

A. Yes, sir; it seems that it would.

Q. Isn't it a fact that Mitchell licks, which is a flat country, as I understand it, drains territory much east of these high peaks around the red line into the Tellico river?

A. Yes, sir.

Recross-examination:

Q. In other words, you say that that red line does not indicate the divide of the waters?

A. It seems that it gives a fair description of it.

Q. Is there such a thing as a divide of the waters between Snow Bird and Tellico?

A. Yes, sir.

Q. Can you say whether that red line indicates it or not?

A. I do not know, sir, that I could say that it did or did not. I think it would give a fair description of it.

And further saith not.

F. M. LOVINGOOD.

Filed August 24th, 1900.

J. T. CARTER,
Deputy Clerk.

78 JOHN R. MCCLELLAND, next witness, of lawful age, being first duly sworn, deposed and said:

Q. State your age and place of residence?

A. 36 years old; reside at Murphy, N. C.

Q. What has been for a number of years your occupation?

A. Surveyor.

Q. Did you ever survey the State line between Tennessee and North Carolina from the Tennessee river to the Unaka turnpike?

A. Yes, sir.

Q. Do you know the State line along the disputed territory between Stevenson and others and the Fain heirs?

A. Yes, sir.

Q. When did you first run that line?

A. In 1893.

Q. What were you there to find out?

A. To find out where the State line was—where the State line had been located.

Q. Under what circumstances did you go there to find out where the State line was and what authority did you have?

A. I was under the authority of the State of North Carolina.

Counsel for complainants excepts to the foregoing question and answer because there is no record evidence introduced.

Q. Where did you begin your survey?

A. Unaka Turnpike road and ran towards the Tennessee river.

Q. Did you find marks or indications of the State line marks along the line from Unaka turnpike to the Tennessee river?

A. Yes, sir.

Q. What is the State line marks?

A. Three chops with a side line, and two hacks and a blaze for fore and aft.

Q. Did you make this map filed as Exhibit "H" to Hale's deposition?

A. Yes, sir.

Q. Is that map made from actual survey?

A. Yes, sir.

Q. Does that map by actual survey show the disputed territory to be between the black line from county corner to a place called Bryson gap, and the red line around those two points?

79 A. Yes, sir; that is the disputed bounds.

Q. Do you know a point on the State line known as Laurel top?

A. Yes, sir.

Q. Do you know the point called Gold Bryson gap?

A. Yes, sir.

Q. Between those two points where does the State line run and what evidence have you of it?

A. It runs down the State ridge. I found marked trees all the way.

Q. From Laurel top running back what course would that be to the Tellico river?

A. Southwest.

Q. From Laurel top to the Tellico river what ridge are you on?

A. State ridge.

Q. Now, if you were to run according to these calls: "Crossing Tennessee river at a distance of 65 miles from the beginning; from Tennessee river to main ridge and along the extreme height of the same to a place where it is called Unaka or Unicoi mountain, striking the old trading path" and so on, as a surveyor, after you passed Laurel top, which way would you run to follow the main ridge?

A. Down the State ridge.

Counsel for complainants except to the foregoing question and answer because the same are incompetent and irrelevant.

Q. And why would you do so?

A. It is the only ridge you can see from there.

Q. What is the course of that State ridge?

A. Southwest.

Q. If you were to leave this State ridge at a place designated on this map as County Corners and follow the red line on this map, what direction would you take?

A. Southeast at the start—southeast for about four miles.

Q. You would follow no ridge to follow that red line from this county corner to follow that red line?

A. Broken hills and gaps is all there is.

Q. Is there any ridge or spur breaking off from the State ridge at that point?

A. No, sir.

Q. Describe that mountain there?

A. It is just a side of a mountain there.

Q. Did you take any elevation on this State ridge?

A. Yes, sir.

Q. And on this red line?

80 A. Yes, sir.

Q. Where is the highest point on this State ridge?

A. After you leave the county corner, going towards the Tellic river.

Q. What is the height of them compared with the highest poi on this red line?

A. It is higher than any point on it.

Q. Then from that highest point towards the Tellico river, wha is it?

A. It is a ridge all the way.

Q. How far from Tellico river does it commence to break down

A. About three-fourths of a mile, I guess.

Q. When you crossed the Tellico river did you find any ridge o the other side?

A. Yes, sir.

Q. Where?

A. Right opposite.

Q. What is the character of that ridge?

A. It is a high ridge.

Q. Where does that lead to?

A. It leads on up to the top of the mountain.

Q. As a surveyor going from Laurel top to County Corners, an on in the direction of Tellico river and southwesterly course as yo have said, do you consider that a main or leading ridge or not?

A. Yes, sir.

Q. Were these marks that you say you found along the State lin on top of that ridge?

A. Yes, sir.

Q. What was the character as to age of those marks?

A. They were old.

Q. How long did they look like they had been there?

A. I couldn't tell you. They were very old. They were th oldest I had seen, and I have surveyed a good deal in here.

Q. Were they older than any of the land marks of entries tha you had surveyed in this locality?

A. Yes, sir.

Q. Are those old marks the ones that you described a while ag as being marked for State line marks?

A. Yes, sir.

Q. Going now from Laurel top and southwesterly direction an crossing Tellico river, after you have crossed the river, did you fin any marks?

A. I found a holly tree.

Q. What kind of a tree was it?

A. It was a holly tree.

81 Q. What marks did it have on it?

A. 86-M.

Q. Did you find any other tree further on?

A. Yes, sir, a spruce pine.
Q. How was it marked?
A. Side line—three chops.
Q. You mean a State line side line tree?
A. Yes, sir.
Q. Did you take the distance around this red line from the place designated here as county corner to where it comes back to the black line on this map?
A. Yes, sir.
Q. What is that distance?
A. Twelve miles.
Q. What is the distance from county corner to where the black and red line again come together down the State ridge?
A. Six miles.
Q. If you were called on to run from the Catalooche turnpike to the Unaka turnpike 101, could you get there in 101 miles, or any where near it by running around this red line?
A. No, sir.
Q. Suppose the Tennessee river to be 65 miles from the Catalooche turnpike and it were 21 miles to that holly, would that holly stand in the proper place to be an 86 mile post?
A. Yes, sir.
Q. In 1893, when you saw this marked holly, 86–M, what was the appearance of the age of those marks?
A. Very old.
Q. Do you know why this ridge is called the State ridge?
A. It has always been known as the State ridge.
Q. In surveying this line, and hunting the true State line, as you say you did in 1893, and in running from Laurel top southwesterly along down to the top of the State ridge to the Tellico river; thence across the Tellico river and by the holly that you speak of to the Unaka mountain, state whether or not the way you have located this line by the State line marks between the point known as county corner on the map and the point near Bryson gap, where the two disputed lines come together, you did in fact find it located on the main ridge broken only by the Tellico river running through it?
A. Yes, sir.
Q. You state you made this map by actual survey, and surveyed the line known as the red line?
82 A. Yes, sir.
Q. Did you find any marks indicating a State line around the red line at any point?
A. No, sir.
Q. Was there any line marked around this red line—any kind of a mark?
A. I did not see any.
Q. When did you survey this red line?
A. In 1899.
Q. Were you making a survey of both these lines in order to

make this map now before you, and hunting for the truth of the matter?

A. Yes, sir.

Cross-examination by Mr. SEYMOUR:

Q. In your 1893 survey, what line did you follow southwest from the Tennessee river?

A. I did not start at the Tennessee river. I started at the Unaka Turnpike road.

Q. What location did you make of your State line where it approached or reached the Tennessee river?

A. Down the Fodder Stack lead.

And further saith not.

J. R. McCLELLAND.

Filed, August 24th, 1901.

J. T. CARTER,
Deputy Clerk.

STATE OF NORTH CAROLINA, }
Cherokee County. }

I, S. W. Lovingood, clerk of superior court of Cherokee county N. C., do hereby certify that the foregoing depositions were taken sworn to and subscribed, before me at my office in the town of Murphy, as per the agreement of counsel for complainants and defendants appearing at the heading of said depositions.

Witness my hand and seal at my office in Murphy, this 28th day of May, 1900.

S. W. LOVINGOOD,
[SEAL.] *Clerk Superior Court, Cherokee County, N. C.*

(Endorsed:) Depositions of C. M. Watson, Jasper L. Fain, A. A. Fain, Rufus Hunsucker, F. M. Lovingood, and J. R. McClelland. Filed August 24th, 1900. J. T. Carter, deputy clerk.

83 STATE OF NORTH CAROLINA, }
Cherokee County. }

By virtue of a warrant No. 1331, issuing from the entry taker of said county, I have surveyed for Jacob Laudermilk, a certain tract of land lying in said county between Tellico river and Snow: Beginning on a chestnut tree the S. W. corner of No. 1351 and runs N. 60 E. one hundred and eighty poles to a corner of No. 1351 then with that line N. 25 W. fifty-eight poles to the N. W. corner of said No. —, a stake on the State line, then with said line S. 60 W., one hundred and eighty poles to a stake on said line, then S. 35 E.

thirty-two poles to the beginning, being bounded by former lines and containing fifty acres more or less. Surveyed Nov. 30th, 1863.

PIERCY, M., *C. S.*

C. B. S. RHEA.
JAS. TIPTON.
(Signed) J. W. C. PIERCY.

Filed, Aug. 24, 1900.

J. T. CARTER,
Deputy Clerk.

No. 3752.

STATE OF NORTH CAROLINA:

Know ye, that we, for and in consideration of the sum of five (5) dollars and fourteen (14) cents, paid into the treasury by M. Fain, assignee, have given and granted and by these presents do give and grant unto M. Fain, assignee, a tract of land containing fifty (50) acres, lying and being in the county of Cherokee, warrant No. 1331 in district No. —, it being part of the land lately acquired by treaty from the Cherokee Indians, and sold in obedience to an act of the General Assembly of this State, bounded as follows, viz: Between Tellico river and Snow Bird: Beginning on a chestnut tree the S. W. corner of No. 1351; and runs N. 60 east 180 poles to a corner of No. 1351: thence with that line north 25 west 58 poles to the N. W. corner of said No. — a stake on the State line; thence with said — south 60 west 180 poles to a stake on said line; thence south, 35 east, 32 poles to the beginning, as by the plat hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to hold to the said M. Fain, assignee, his heirs or assigns forever. Yielding and paying to us such sums of money, yearly or otherwise as our General Assembly from time to time may direct. Provided always that the said grantee shall cause this grant to be reg-
84 istered in the register's office of our said county of Cherokee, within twelve months from the date hereof, otherwise the same shall be void.

Entered, June 1st, 1853.

In testimony whereof we have caused these our letters to be made patent, and our great seal to be hereunto affixed. Witness, Curtis H. Brogden, Esq., our governor and commander in chief at Raleigh, the 26th day of November in the one hundredth year of our Independence, and the year of our Lord, one thousand eight hundred and seventy-five.

(Signed) C. H. BROGDEN, *Governor.*

By command:

(Signed) WM. H. HOWERTON,
Secretary of State.

10—98

The foregoing grant came to hand December 23d, 1880 and was registered in Book R, page 140.

R. A. AKIN,
Register of Deeds.

NORTH CAROLINA, }
Cherokee County. }

I, Thos. C. McDonald, register of deeds in and for the county of Cherokee, do hereby certify that the foregoing contains a true and perfect copy of the State grant to M. Fain as appears in Book R, page 140, same being a record of my office. Given under my hand and seal of office, this the 20th day of August, 1900.

[SEAL.] THOS. C. McDONALD,
Register of Deeds.

(Ten cents U. S. documentary stamp.)

STATE OF NORTH CAROLINA, }
Cherokee County. }

By virtue of a warrant No. 1321 issuing from the entry takes of said county I have surveyed for M. Fain a certain tract of land lying in said county on the waters of Tellico river, beginning on the S. W. corner of Jacob Laudermilk's No. 1331 and 1317 and 569 and runs No. 55 W. thirty poles to a stake in the State line and the N. W. corner of No. 1331 then with the State line S. 30 W. one hundred and eighty poles to a stake in said line, then S. 55 E. sixty poles to two water oaks the N. W. corner of 1317, then with that line No. 35 E. one hundred and eighty poles to the beginning being bounded all round by other lines and the State line, and containing
85 fifty acres more or less. Surveyed Nov. 30th, 1853.

PIERCY, M.

C. B. S. RHEA.
JAS. TIPTON.
(Signed)

J. W. C. PIERCY, *C. S.*

Filed Aug. 24th, 1900.

J. T. CARTER,
Deputy Clerk.

No. 3744.

STATE OF NORTH CAROLINA:

Know ye, that we, for and in consideration of the sum of two (2) dollars and fifty (50) cents paid into the treasury by M. Fain have given and granted, and by these presents do give and grant unto M. Fain a tract of land containing fifty (50) acres, lying and being in the county of Cherokee, warrant No. 1321 in district No. —, it being part of the land lately acquired by treaty from the Cherokee Indians, and sold in obedience to an act of the General Assembly of this State bounded as follows, viz: On the waters of Tellico river,

beginning on the S. W. corner of Jacob Laudermilk's No. 1331, 1317 and 560 and runs north 55 west 30 poles to a stake in the State line and the N. W. corner of No. 1331, then with the State line south 30, west 180 poles to a stake in said line; thence south 55, east 60 poles to two water oaks, the S. W. corner of No. 1317; thence with that line north 55, east 180 poles to the beginning, as by the plat hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances, to the said land belonging or appertaining, to hold the said M. Fain, his heirs or assigns forever. Yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct. Provided always, that the said grantee shall cause this grant to be registered in the register's office of our county of Cherokee within twelve months from the date hereof, otherwise the same shall be void.

Entered June 1st, 1853.

In testimony whereof, we have caused these our letters to be made patent, and our great seal to be hereunto affixed. Witness, Curtis H. Brogden, Esq., our governor and commander in chief, at Raleigh, the 26th day of November in the one hundredth year of our Independence and in the year of our Lord one thousand eight hundred and seventy-five.

(Signed.) C. H. BROGDEN, *Governor.*

By command:

WM. H. HOWERTON,
Secretary of State.

86 The foregoing grant came to hand December the 23d, 1880, and was duly registered in Book R, page 134.

R. A. AKIN,
Register of Deeds.

NORTH CAROLINA, }
Cherokee County. }

I, Thomas C. McDonald, register of deeds in and for the county of Cherokee, do hereby certify that the foregoing contains a true and perfect copy of the State grant to M. Fain, as appears in Book R, page 134, same being a record of my office.

Given under my hand and seal of office, this the 20th day of August, 1900.

THOMAS C. McDONALD,
Register of Deeds.

[SEAL.]

(Ten cents U. S. documentary stamp.)

STATE OF NORTH CAROLINA:

Know ye, that we, for and in consideration of the sum of twenty dollars paid into the treasury by M. Fain, have given and granted, and by these presents do give and grant unto M. Fain a tract of

land containing one hundred acres, lying and being in the county of Cherokee tract No. 1314, in district No. 5, it being part of the land lately acquired by treaty from the Cherokee Indians, and sold in obedience to an act of the General Assembly of this State, bou-ded as follows, viz: On the waters of Tellico river: Beginning on a stake on the State line and S. 35, E. ninety poles to a stake, then N. 45, E. one hundred and eighty poles to a stake, then N. 35, W. ninety poles to a stake, *thus* S. 45 W. one hundred and eighty poles to the beginning, as by the plat hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances, to hold to the said M. Fain his heirs or assigns forever. Yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct. Provided always, that the said grantee shall cause this grant to be registered in the register's office of our said county of Cherokee within twelve months from the date hereof, otherwise the same shall be void.

In testimony whereof, we have caused these our letters to be made patent, and our great seal *seal* to be hereunto affixed. Witness, Curtis H. Brogden, Esq., our governor and commander in
87 chief at Raleigh, the fifth day of February, in the ninety-ninth year of our Independence, and in the year of our Lord one thousand eight hundred and seventy-five.

C. H. BROGDEN, *Governor.*

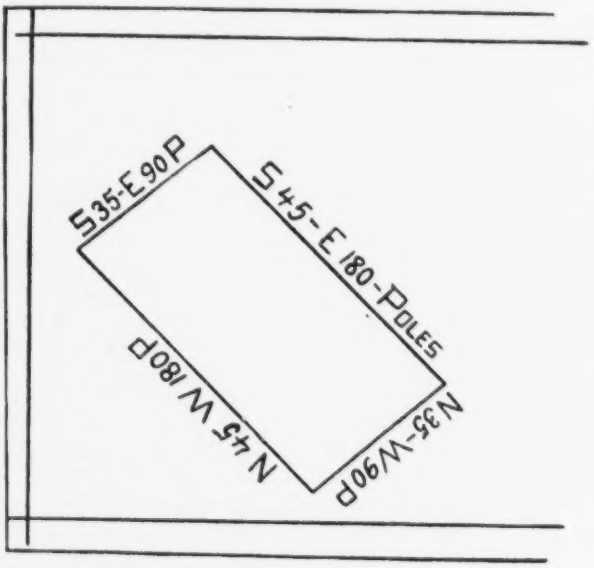
By command:

WM. H. HOWERTON,
Secretary of State.

Entered June 1st, 1853. Filed Aug. 24th, 1900.

J. T. CARTER,
Deputy Clerk.

Scale, 100 poles per inch.



STATE OF NORTH CAROLINA, }
Cherokee County. }

By virtue of a warrent No. 1314 issuing from the entry taker of said county I have surveyed for M. Fain a certain tract of land lying in said county on the waters of Tellico river, beginning on a stake in the State line and runs S. 35 E. ninety poles to a stake, then N. 45 E. one hundred and eighty poles to a stake, then N. 35 W. ninety poles to a stake, then S. 45 W. one hundred and eighty poles to the beginning containing one hundred acres more or less. Surveyed Nov 30th, 1853.

PERCY, M.
J. W. C. PERCY.

C. B. S. RHEA.
I. W. TIPTON.

I do certify that M. Fain was the purchaser of tract No. 1314 at the sum of twenty dollars. Oct. 23d, 1853.

D. F. RANSOM, *E. T.*

88 NORTH CAROLINA, }
Cherokee County. }

I, Thomas C. McDonald, register of deeds in and for Cherokee county do hereby certify that the foregoing contains a true and per-

fect copy of the State grant to M. Fain as appears in Book R, page 120 same being a record of my office.

Given under my hand and seal of office this the 20th day of August, 1900.

[SEAL,] THOMAS C. McDONALD,
Register of Deeds.

(Ten cents U. S. documentary stamp.)

The foregoing grant came to hand Dec. the 9th, 1880, and was duly registered in Book R, page 120.

R. A. AKIN,
Register of Deeds.

STATE OF NORTH CAROLINA :

Know ye, that we, for and in consideration of the sum of ten (10) dollars and three (3) cents paid into the treasury by M. Fain have given and granted and by these presents do give and grant unto M. Fain a tract of land containing fifty (50) acres, lying and being in the county of Cherokee, No. 1352, in district No. 5, it being part of the land lately acquired by treaty from the Cherokee Indians, and sold in obedience to an act of the General Assembly of this State, bounded as follows, viz :

On the waters of Tellico river: beginning on a hickory tree, standing on the line of No. 1310, near the trail leading from Israel Roberts' to Tiptons' and runs with the line of a farmer No. south 140 poles to the N. W. corner of said No. —, thence with that line north 20, east 160 poles passing the beginning corner of said No. to a stake; thence north 33, west 120 poles to a locust, the S. W. corner of No. 622; thence with the line of No. 1310 south 20, west 90 poles to the beginning as by the plat hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances, to the said land belonging or appertaining to hold the said M. Fain, his heirs or assigns forever. Yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct. Provided always that the said grantee shall cause this grant to be registered in the register's office of our said county of Cherokee within twelve months from the date hereof, otherwise the same shall be void.

Entered June 1st, 1853.

89 In testimony whereof, we have caused these letters to be made patent, and our great seal to be hereunto affixed. Witness, Curtis H. Brogden, Esq., *and* governor and commander in chief, at Raleigh, the 26th day of November, in the one hundredth year of our Independence, and in the year of our Lord one thousand eight hundred and seventy-five.

C. H. BROGDEN, *Governor.*

By command.
WM. H. HOWERTON,
Secretary of State.

Filed August 24th, 1900.

J. T. CARTER,
Deputy Clerk.

STATE OF NORTH CAROLINA, }
Cherokee County. }

By virtue of a warrant No. 1352 issuing from the entry taker's office of said county, I have surveyed for M. Fain a certain tract or parcel of land lying in said county on the waters of the Tellico river, in district No. 5, beginning on a hickory tree standing on a line No. 1310, near the trail leading from I. Roberts' to Tipton's and runs with the line of a farmer No. S. one hundred forty poles to N. W. corner of said No. —, then with that line twenty east one hundred and sixty poles passing the beginning corner of said No. to a stake N. twenty-three W. one hundred and twenty poles to a locust the S. W. corner of No. 622 then with the line of No. 1310 S. twenty W. ninety poles to the beginning being bounded by the former lines and containing fifty acres more or less.

Surveyed Nov. 22d, 1853.

PIERCY, M.
J. W. C. PIERCY, *S. C.*

C. B. L. RHEA.
J. B. ALLEN.
I. T. C. McDONALD.

I, T. C. McDonald, do hereby certify that the foregoing is a true copy of grant as registered in Book R, page 126.

This August 20th, 1900.

T. C. McDONALD,
[SEAL.] *Register of Deeds.*

(Ten cents U. S. documentary stamp.)

The foregoing grant came to hand Dec. the 9th, 1880, and was registered in Book R, page 126.

R. A. AKIN,
Register of Deeds.

Filed August 24th, 1900.

J. T. CARTER,
Deputy Clerk.

90 STATE OF NORTH CAROLINA:

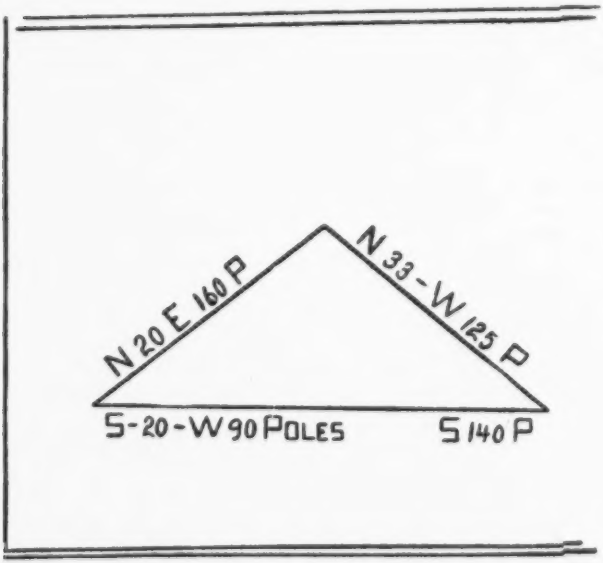
Know ye, that we, for and in consideration of the sum of twenty-five dollars paid into the treasury by M. Fain, have given and granted and by these presents do give and grant unto M. Fain a tract of land containing one hundred acres, lying and being in the county of Cherokee tract No. 1312, in district No. 5, it, being part of the land lately acquired by treaty from the Cherokee Indians, and sold in obedience to an act of the General Assembly of this State, bounded as follows, viz: on the waters of Tellico: Beginning on a

spruce pine standing near the bank of Tellico river and near a large rock and runs N. 70 E., one hundred and forty poles to a stake, corner of No. 1314, then with that line N. 35, to ninety poles then north ninety poles to a stake, then S. 70, W. one hundred and eighty poles to a stake, then S. ninety poles to the beginning as by the plat hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances, to the said land belonging and appertaining, to hold to the said M. Fain, his heirs or assigns forever. Yielding and paying to us such money yearly or otherwise as our General Assembly from time to time may direct. Provided always, that the said grantee shall cause this grant to be registered in the register's office of our said county — Cherokee within twelve months from the date hereof, otherwise the same shall be void.

In testimony whereof, we have caused these our letters to be made patent, and our great seal to be hereunto affixed. Witness, Curtis H. Brogden, Esq., our governor and commander in chief at Raleigh, the sixth day of Feb., in the ninety-ninth year of our Independence, and the year of our Lord one thousand *and* eight hundred and seventy-five.

C. H. BROGDEN, *Governor.*

91 Scale, 100 poles per inch.



By command:

WM. H. HOWERTON,
Secretary of State.

Filed August 24th, 1900.

J. T. CARTER,
Deputy Clerk.

STATE OF TENNESSEE, }
Cherokee County. }

By virtue of a warrant *to* No. 1312 issuing from the entry taker of said county, I have surveyed for M. Fain a certain tract of land lying in said county on the waters of Tellico river, beginning on a spruce pine standing near the bank of the Tellico river, and near a large rock and runs N. 70, E. two hundred and forty poles to a stake, N. 35, W. ninety poles to corner of said No. —, then N. ninety poles to a stake then 70 W. one hundred and eighty poles to a stake, then S. ninety poles to the beginning containing one hundred acres more or less. Surveyed November 30th, 1853.

PIERCY, M.
J. W. C. PIERCY, *C. S.*

R. B. S. RHEA.
JAS. TIPTON.

92 NORTH CAROLINA, }
Cherokee County. }

I, Thos. McDonald, register of deeds, in and for Cherokee county do hereby certify that the foregoing contains a true and perfect copy of the State grant to M. Fain as appears in Book R, page 114, same being a record of my office.

This the 20th day of August, 1900.

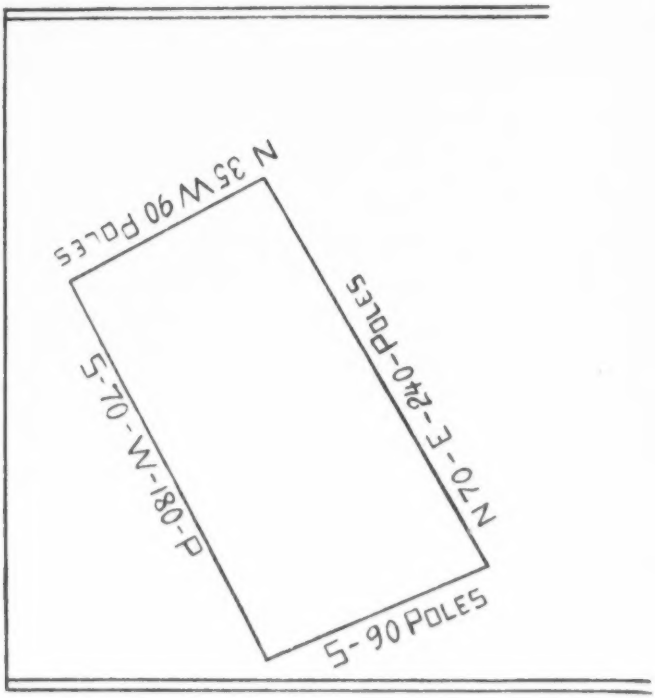
THOS. C. McDONALD,
[SEAL.] *Register of Deeds.*

(Ten cent U. S. documentary stamp.)

The foregoing grant came to hand Dec. the 6th and was registered in Book R, page 114.

R. A. AKIN,
Register of Deeds.

Scale, 100 poles per inch.



93 STATE OF NORTH CAROLINA:

Know ye, that — for, and in consideration of the sum of two dollars paid into the treasury by M. Fain, have given and granted and by these presents do give and grant unto M. Fain, a tract of land containing one hundred acres, lying and being in the county of Cherokee, tract No. 2580, in district No. 5, it being part of the land lately acquired by treaty from the Cherokee Indians, and sold in obedience to an act of the General Assembly of this State bounded as follows, viz: on the waters of Tellico river: Beginning on the northeast corner of tract No. 1314 and the State line and running with said line N. 20, E. twenty-five chains to the southwest corner of tract 1321; thence with the line S. 55, E. passing its southeast corner and with the line of No. 1317 passing to southeast corner at one hundred and fifty poles; thence the same course eighty poles to a post and points; thence S. 62, W. thirty-eight chains to the east corner of tract No. 1314; thence with its lines N. 55, to twenty-two chains and fifty links to the beginning.

As by the plat hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining, to hold to the said M. Fain his heirs or assigns forever. Yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct. Provided always, that the said grantee shall cause this grant to be registered in the register's office of our said county of Cherokee within twelve months from the date hereof, otherwise the same shall be void.

In testimony whereof, we have caused these our letters to be made patent, and our great seal hereunto affixed.

Witness, Curtis H. Brogden, Esq., our governor and commander in chief, at Raleigh, the sixth day of February, in the ninety-ninth year of our Independence, and the year of our Lord one thousand eight hundred and seventy-five.

C. H. BROGDEN, *Governor.*

By command:
WM. H. HOWERTON,
Secretary of State.

STATE OF NORTH CAROLINA, }
Cherokee County. }

By virtue of a warrant No. 2580, issuing from the office of the entry taker of said county, I surveyed for M. Fain a certain
94 tract of land on the waters of Tellico, beginning on the N. E. corner of tract No. 1314, on the State line and runs with said line N. 20 E. twenty-five chains to the S. W. corner of No. 1321; thence S. 55 E. with the line of said No. passing its S. E. corner and with the line of No. 1217 to its S. E. corner at one hundred and fifty poles, and thence the same corner eighteen poles to a post and pointers; thence south 62 W. thirty-eight chains to the E. corner of tract No. 1314, and thence with the line thereof N. 25 W. twenty-two chains and fifty links to the beginning, containing one hundred acres of land, more or less, surveyed May 28th, 1856.

WM. BEAL, *E. S.*

C. DAVIS.
R. DAVIS.
P. J. TURNBILL.

Filed Aug. 24th, 1900.

J. T. CARTER,
Deputy Clerk.

I, T. C. McDonald, do hereby certify that the foregoing is a true copy of the grant as recorded in Book R, page 133, this August 20, 1900.

THOMAS C. McDONALD,
Register of Deeds.

[SEAL.]

(Ten cents U. S. documentary stamp.)

The foregoing grant came to hand December the 23rd, 1880, and was duly registered in Book R, page 133.

R. A. AKIN,
Register of Deeds.

Filed Aug. 24th, 1900.

J. T. CARTER,
Deputy Clerk.

JNO. R. McLELLAND.

Filed Aug. 24, 1900.

J. T. CARTER,
Deputy Clerk.

STATE OF NORTH CAROLINA, }
Cherokee County. }

I, S. W. Lovingood, clerk of the superior court of Cherokee county, N. C., do hereby certify that the foregoing depositions were taken, sworn to and subscribed before me at my office in the town of Murphy as per the agreement of counsel for complainants and defendants, appearing at the heading of said depositions.

Witness my hand and seal of office, at my office in Murphy, this the 28th day of May, 1900.

S. W. LOVINGOOD,
[SEAL.] *Clerk Superior Court, Cherokee County, N. C.*

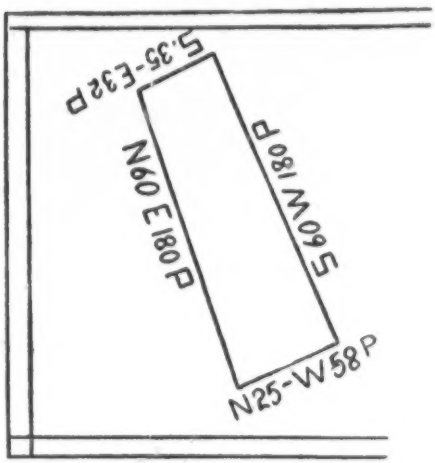
95 Filed Aug. 24, 1900.

J. T. CARTER,
Deputy Clerk.

EXHIBIT "B" TO J. L. FAIN'S DEPOSITION.

Filed Aug. 24, 1900. J. T. Carter, Deputy Clerk.

Scale, 100 poles per *perch*.



In the United States Circuit Court for the Northern Division of the Eastern District of Tennessee.

HUGH STEVENSON ET AL.
vs.
JASPER FAIN ET AL.
} Equity Docket, No. 1153.

Deposition of H. J. Merwin, witness for complainants, taken by agreement, waiving notice and formal caption and certificate, at Knoxville, this 19th day of November, 1900.

Q. 1. State your name, occupation and place of education and year of graduation, and what experience you have had in surveys and geographical work in Tennessee and Kentucky.

96 A. My name is H. J. Merwin. By occupation I am a surveyor. I am a graduate of Columbia College School of Mines, where I took the degree of mining engineer in the year 1879. I have had about 20 years' experience surveying and mapping lands in Tennessee, Kentucky and adjoining States.

Q. 2. State if you have examined the mountain range around the head of Tel-ico river and the ridge called the State ridge and Jenks ridge in Monroe county, Tennessee. Also examine the acts of Ten-

nessee, 1821, here shown you, and give your construction of the act the words as follows: "Crossing the Tennessee river, then to the "main ridge and with the main ridge to the place where it is "called Unaka mountain"—as applied to this locality, and from your inspection state where the State line would be located by the description above recited, and your reasons for such expert opinion?

A. I have examined the mountain range and the ridge referred to in Q. 2—also the acts of Tennessee, 1821. The location of the State line as described by the words quoted in Q. 2. from the acts of Tennessee depends on the meaning to be attached to the words "main ridge." I would understand by these words the dividing range separating the waters of Tellico river from the waters of the streams lying to the eastward. My reason is that this range is a divide of waters. In following it around no streams are crossed, and it is the only way to get from the head of the State ridge to the head of the Jenks ridge without crossing a stream. The State ridge and Jenks ridge line descends to the valley of Tellico river, crosses that stream and then ascends on the other side till it reaches the main divide again. For this reason I would not regard it as the State line. It does not follow the "main ridge."

H. J. MERWIN.

Cross-examination of H. J. MERWIN by S. G. Shields, solicitor for defendants:

Q. Have you made any surveys of the State line in the neighborhood of what is known as the State ridge in dispute in this cause?

A. I have not.

Q. How did you come to go down in this country to look at the topography of the country?

A. I was employed by Mr. Seymour to go down there.

Q. You were not familiar with the lay of the mountain ridges of that country when you were thus employed, were you?

A. I was not.

97 Q. When you went down in the neighborhood of the State ridge to examine these mountains did you go up the State ridge from the Tellico river going east?

A. I did for about a mile from the river.

Q. Did you go up the State ridge to a point where it is claimed by the complainants that the State line should leave the State ridge and go around the water divide?

A. I did not.

Q. Do you know how far it is from the Tellico river to what is known as the county line corner on top of the State ridge?

A. I only know approximately by looking at the ridge from the other side of the mountain.

Q. What do you mean by looking at the ridge from the other side of the mountain?

A. I mean from the southwest side of the river or the top of Jenk's ridge Tipton knob and places like that.

Q. These points that you speak of were west from the Tellico river?

A. I should say it was southwest.

Q. It was on the west side of the river was it not?

A. Yes, sir.

Q. You say in your answer to interrogatory second that you would understand by the words main ridge, the dividing ridge separating the waters of the Tellico river from the waters of the streams lying to the eastward. Does the statutes of Tennessee say anything about dividing waters?

A. I don't think it does.

Q. Counsel for complainant has simply intended to have you construe this statute, hasn't he?

A. That is the way it looks to me.

Q. He didn't have you make any surveys or take any elevations at the point where he claims the line leaves the top of the State ridge to go around the water divide, did he?

A. He did not.

Q. And you made no such surveys and took no elevations?

A. Not at that point. I made no surveys at all.

Q. The point on what you call the Jenks ridge, from which you viewed the mountain ranges around there, is some five or six miles or seven miles from the point where counsel for complainant claims that the State lines leaves the State ridge and runs around the water divide, is it not?

A. Something like five miles, I should say.

Q. You didn't attempt to go around the water divide so
98 as to take a near view of those mountains, did you?

A. I went around the divide for a mile and a half, perhaps, from Jenk's ridge.

Q. You went around the divide then solely on the west side of the river?

A. Yes, sir.

Q. And you did not go within three or four miles of where counsel for the complainant claims that the State line leaves the State ridge to go around the water divide, did you?

A. No, sir.

Q. What is known as the State ridge down there, going to the Tellico river and then arising on the west side and going straight on up to the top of the ridge is a well defined ridge, is it not?

A. The State ridge is a well defined ridge to the Tellico river. I don't think it is called the State ridge beyond that.

Q. Still a corresponding ridge rises immediately on the other side of the river and goes on westward in a well defined ridge, does it not?

A. Yes, sir. The State ridge is more in the nature of a spur than it is a ridge, for it slopes down clear to the river. It does not maintain its elevation.

Q. It maintains its elevation for considerable height with the exception of being broken in two by the Tellico river?

A. If you call the spur on the other side of the State ridge it does.

Q. The State ridge runs the course given in the act, doesn't it?

A. I don't know.

Q. If, as a matter of fact, there is no spur leading off from the State ridge at a point where it is admitted the State line is on the State ridge southward in the direction that counsel for the complainant- claims the line should go, but the main ridge on which the admitted State line is situated at one point, continued on down and is broken in two by the Tellico river and rises as you have described immediately on the other side, and goes on westward over the main ridges, then you would not call the State ridge a spur, would you?

A. Under the facts which you suppose I would not.

Q. So it is that you were not within some three or four miles of the point where counsel for complainants claims that the State line leaves the top of what is known as the State ridge to go around the water divide?

A. Yes, sir, that is a fact.

And further saith not.

H. J. MERWIN.

99 Sworn to and subscribed before me this November 19, 1900.

W. K. ANDERSON,
Notary Public.

Bill of Costs.

W. J. Anderson, N. P., taking 1 depo	$1 00
H. J. Merwin, it. 1 day	1 00
[NOTARIAL SEAL.]	$2 00

The above bill of costs is correct.

W. K. ANDERSON,
Notary Public.

Filed Dec. 7, 1900.

J. T. CARTER,
Deputy Clerk.

In the United States Circuit Court for the Northern Division of the Eastern District of Tennessee.

HUGH STEVENSON ET AL.
vs.
JASPER FAIN ET AL. } No. 1153.

The depositions of H. Houston Miller, John A. Miller, and B. Frank Payne, witnesses for complainants, taken by agreement before Norman B. Morrell, notary public, in Knoxville, Tennessee, at the office of Charles Seymour, it being agreed that said depositions shall be taken before said Norman B. Morrell, notary public, who shall swear the witnesses before they depose, and shall certify the depositions after they have been typewritten out and signed by the witnesses under a regular certificate to the depositions, under the laws of the State of Tennessee, and when so taken and certified the said Norman B. Morrell shall seal them up and forward them to the clerk of the United States circuit court at Knoxville, Tennessee, and the fact that said despositions were taken without commission from the United circuit court at Knoxville, and before said notary public, and all other formalities are hereby waived, and said depositions when so taken and filed shall be read as evidence in said cause, subject only to exception for irrelevancy and incompetency, and shall not be excepted to for want of formal certificate and proper officer to take the same according to the forms of the United States circuit court.

CHARLES SEYMOUR,
Sol. for Compl'ts.
SAMUEL G. SHIELDS,
Sol. for Def'ts.

100 The first witness, Mr. B. FRANK PAYNE, being duly sworn, deposed as follows:

Q. 1. How old are you and where do you live?

A. Monroe county, Tennessee. According to my record of age I am 70 years of age. I have lived in Monroe county all my life except two years—'51 and '52.

Q. 2. If you have known any of the old men living on Tellico river in the mountains who claimed to know anything about the State line survey, state who they were and where they lived.

A. I knew a man by the name of Larkin Brannum, who professed to be with the party that made the first survey in the Ocoee purchase. He was in charge of the pack horses. He stated to me many times in conversation that while on this survey the fog blew down on them and it grew very dark; they were lost in the midst of the mountains and took a lead down to the river, now called Telico river, and after crossing this stream struck out a little east in the

direction of what is now called Snow Bird spring—known as that. When the fog blew up next day they found they were wrong in running this State line and they went back to what is called now the Jenks knob, up this side of the gap on Telico leading out from Hanging Dog over to Bald river, you know. And as they thought it too much labor, they just called, Mr. Brannum said, for the heights of the mountains at the Snow Bird and then with the height of the mountain to the head of Slick rock and down Slick rock to the little Tennessee for the State line, is the way he often times told me in conversation. That he was with them at that time in charge of the pack horses that carried the provisions. Old man Isaac Tate told me the same—he was an old citizen of Monroe county, district nineteenth, &c.

Q. 3. Did Tate claim to have been on the survey?

A. Not with them in the survey, but claimed he was with the owners of the land afterwards, who surveyed this out.

Q. 4. What did Brannum tell you with regard to the marks?

A. Told me it was a blaze and a hack, on the front and face. A blaze and 2 hacks up to the set-off, which is called by us now the Seventh Range line; never was known to be anything else by anybody but the 7th Range line.

Q. 5. Which side of the 7th Range line was this—east or west?

A. Northwest side.

Q. 6. What year was it that Mr. Brannum claimed to have been along with the pack horses?

101 A. I think, sir, about '22. I think probably you will see in the records—the Hiwassee purchase was done in the year '22, and the Ocoee come in '37–8–9, where those men, Mr. Wetmore and Mr. Stevenson entered this land.

Q. 7. What did these men give you to understand was the location of the State line?

A. Heights of the mountain, sir, clear out.

Q. 8. Do you mean by "clear out" all the land on the waters of Telico?

A. All on this side of the waters of Telico heading up to the heights of this mountain running back into the eastern district of the State of Tennessee. All on yon side run into Hiwassee, North Carolina, you understand. The heights of the mountains was the divide—the State line, as we have always been taught; we never knew anything else ever since the year '40.

Q. 9. When did Larkin Brannum die?

A. I do not know that I can tell you exactly—ten years, I suppose, is near enough to it.

Q. 10. How long since Isaac Tate died?

A. About eight or nine years.

Q. 11. Did Brannum tell you anything about marking or remarking the line?

A. Yes, he said that he was ordered to go back and mark; he marked part of the way and part he did not—that was done by authority of the surveyor.

Q. 12. How did he mark the line?

A. A blaze and a hack, sir.

Q. 13. When you say marking the line do you mean marking the divide or marking the State ridge?

A. My understanding was from him to disfigure these marks where they went on when the fog was down, and to mark the heights of the mountain as far as he possibly could around; that is the way I understood it.

Q. 14. Did you know Joe Graves?

A. Yes, sir.

Q. 15. Who was he and what did he tell you about the State line?

A. He told me that the State line was on the meanders or tops of the mountains around—that is what Joe Graves said; not the 7th range line at all.

Q. 16. Did you ever know W. H. Hammonds; if so, who was he and where did he live?

A. Fifth district North Carolina, Cherokee county—I knew him.

Q. 17. Where did he live before?

A. Charleston, Tennessee.

Q. 18. Where did he herd his cattle?

102 A. He herded them portionately upon what was known as the Wetmore land up about the head of Telico river.

Q. 19. Did you ever work for him, or were you ever about his herding place?

A. Never worked for him in herding—had been on his farm; he had a herdsman by the name of Joe Presswood.

Q. 20. If you ever heard him state under whose authority he was herding, say so, and say under whom?

Exception.—The defendant- excepts to all of the foregoing questions to the witness and the witness's answers thereto, as to what Larkin Brannum, Joe Graves and Hammonds stated to him about where the line between North Carolina and Tennessee is located, because the statements of the witness are purely upon hearsay testimony and are inadmissible as evidence for the issues in this case. The defendants especially except to the last question and the answer sought thereby because the statements of the herdsman spoken of in the question would be pure hearsay testimony and inadmissible as evidence for the issues in this case.

Q. 21. What did you ever hear Hammonds himself say as to how he was herding and occupying the land?

A. He said he was paying ten cents for herding on the Wetmore property—ten cents a head of stock, sir, is what he told me. They got up some question as to his right—he lived over in North Carolina on his farm and they got up a kind of a confab between them and talked about driving his cattle out, and he stated he had a perfect right there—had a lease and paid to the Wetmore farm ten cents for herding on their property—this is the best I know how to tell it.

Exception.—The defendants except to the last answer of the witness because he is repeating hearsay testimony alone, does not profess to know the facts personally, and such hearsay testimony is inadmissible as evidence in this case.

Q. 22. How long has W. H. Hammonds been dead?

A. Some 7 or 8 years, I can not tell exactly—I do not think it is longer than that.

Cross-examination.

(Examined by Mr. SHIELDS:)

Q. 1. You stated, I believe, that in conversation you had with this man Brannum he stated to you that he was sent back to deface the State line marks that had been put in the wrong place, and to put the State line marks on the trees along the top of the ridge of the mountain in the right place—is that correct?

103 A. Yes, sir, it is.

Q. 2. Did he state that he marked with State line marks, or not, the place where they told him to?

A. No, sir, he did not say. It was too laborious; it would take too long, two or three days to have done it all the way; he did it a part of the way.

Q. 3. He did mark it a part of the way?

A. Yes, sir, a part of the way—and he told me this—that when they completed the survey they simply made the calls for the heights of the mountain around to the head of Slick rock; then down the creek known as Slick Rock creek to the Little Tennessee river—then out to a place up to the Smoky mountain by the way of Chestnut gap, &c. And he claimed to be with the whole outfit.

Q. 4. He did state to you that he did deface all of these wrong marks, did he?

A. No, sir, he did not; he defaced some of them. It was too irksome to deface them all the way they went when the fog was down, but a portion of them he did.

Q. 5. How far around the line did he say he marked them?

A. He did not say, sir, to me.

Q. 6. How far out of the way did he say they had gone when the fog was down?

A. He told me that they found when the fog rose up, according to the treaty and the way that the line was to be run, they was some six or seven miles off the way they was to run through. You will find forty miles from the record clear around—it takes 40 miles to go it.

Q. 7. You state that I will find from the record, if I examine it, to go around the heights of the ridges will take 40 miles?

A. I think it will—that is my judgment.

Q. 8. And that Brannum stated to you that when the fog rose they saw they had got 7 or 8 miles off the line?

A. Off the heights of the mountain—contrary to the line of the

treaty—the top of the mountain, the White Man's mountain, now called Unacoi.

Q. 9. Then if this man who was sent back to deface the marks and to mark the top of the mountain had followed instructions he would have been compelled to go around some 40 miles?

A. No, sir; that is the entire amount from Tennessee river to the corner where I live, where it strikes 21 degrees—to the Hiwassee river and due south to the Georgia line; 40 miles to the top of the Unacoi where I live, not the State line; from the junction of Slick rock to kiver that. I do not talk about going clear through that line.

104 Q. 10. What was this man doing in the survey that was sent back to deface the marks?

A. He was hired in the survey.

Q. 11. In what capacity?

A. In charge of what they called at that time pack horses, packing provisions through to feed the surveyor and the company who done this survey you understand in the Ocoee purchase—I can tell you the name of the man; he was of the name of old Jonathan Tipton that sectionized the entire country to the State line.

Q. 12. This fellow Brannum stated that he went back and defaced the marks upon the erroneous line, or some of them, and then away around the correct line, around the tops of the mountains, at least to some extent, and marked a line around that?

A. To some extent; he did not say that he went clear around the entire heights of the mountain, but a portion of the way out, and he told me how far—as far as Johns bald at the head of Hanging Dog. We have Beaver Dam bald and other balds on the heights of that mountain around. Of course I am very familiar with them all—have hunted there a great deal; used to in the game time.

Q. 13. How did this man say he knew when to leave the line that the commissioners meant as the State line and to go off around marking a new line?

A. Now, don't you know as well as you are a living man that that is an unreasonable question for you to ask me—this treaty was made by an Indian chief, and he was leading the way; he got on a mislead when he treated away this land. The record will show and your intelligence will admit the same.

Q. 14. What record will show it?

A. Of 39 and 40, when this land was entered for Wetmore in Cleveland, Tennessee—the first land entered at a cent an acre. The gentlemen who entered looked at it and thought it was not worth that; then passed along and it was entered at a ½ cent an acre, which the records will show. This gentleman paid for it, to the heights of the mountains around, I presume; if I am not correct I am in error, but I think I am correct.

Q. 15. I do not ask you anything about what Wetmore paid for it, nor where he bought. You said the records would show and my intelligence would teach me that the Indian chief who was leading

the survey got off on a mislead when the fog was down—now, I want to know what records show that fact?

A. Here; you have misunderstood me, maybe; I do
105 not know. The first of it was the Hiwassee—that was the Indian boundary; on this side is called the Ocoee, you understand there is where the boundary is, and where you misunderstood me. I meant that all that was on the southwest side of the Indian boundary come in in the Ocoee purchase; I do not mean anything of this kind about the Indian boundary on this question. I understood that this question that you was asking me about was on yon side, as we call it, of the Indian boundary, called Ocoee purchase.

Q. 16. Now, Mr. Payne, we have traveled a good piece from the material facts that you have testified to in this case, and I want to go back to it. Did this man Brannum tell you at what point he went back to in defacing these marks that the commission had put there as a State line, in order to turn off and get on the true line around the mountain tops?

A. Well, if I was to tell you you would not know any more; Jenks knob on yon side of Little bald—went back there, and he said he went a piece of the way back past Tipton gap leading out to what is called Rocky knob; around there, and he only went to the top of Rocky knob on the heights, you know, not going around through the heights of the mountain. Said he cut out some of the marks, and some he didn't.

Q. 17. Well, did he state that as far around the true line as he was directed to go by the commission he made State line marks?

A. No, sir; said he did not go clear around.

Q. 18. Did he state that he made the State line marks as far as he did go?

A. Yes, sir; said he did as far as he went.

And further deponent saith not.

B. F. PAYNE.

Subscribed and sworn to before me, this Oct. 31, 1900.

[SEAL.] NORMAN B. MORRELL,
Notary Public.

H. HOUSTON MILLER, being duly sworn, deposed as follows:

Q. 1. Please state your name, age and residence, and how long you have lived there?

A. H. H. Miller is my name. I am 52 years old the 26th day of next November. I have lived there in the boundaries of
106 the Telico plains, Monroe county, Tennessee, for about 50 years. I lived in Illinois for two years at the time of the winding up of the civil war.

Q. 2. Where did you live before; that is before you lived at the plains?

A. I lived up in the mountains on the Wetmore land there, near the old boundary line, for nearly 20 years; have lived where I now live for 13 years.

Q. 3. State what relation, if any, old Uncle Joe Graves was to you?

A. An uncle—principally raised me, as my father died when I was young.

Q. 3. This suit is in regard to the North Carolina State line. State what you may remember as to what Uncle Joe Graves told you in regard to his connection with the survey of the line and of the line which is now claimed, crossing Tellico river at the foot of Jenks ridge?

A. Uncle Joe Graves claimed to me that he was on the survey. To the best of my recollection, that the State ridge was called that, not because it was the real line, but because they got lost in a fog that come down and did not find it out until they come to the river, and after they come to the river and found that they was lost in a fog they did not continue that line there—made a plot calling for the heights of the mountain dividing the waters of Tellico into Tennessee and the waters running the other way into Hiwassee river, and other streams over there into North Carolina.

Q. 4. How long has Uncle Joe Graves been dead?

A. I don't recollect just exactly—four to six years.

Q. 5. Do you think of anything else you can explain more fully that he told you about?

A. I do not know that I can about Uncle Joe Graves. If it is worth while, I can make a statement about a conversation between me and Uncle Isaac Tate.

Q. 6. Is he dead?

A. Yes; he is dead.

Q. 7. How old a man was Mr. Tate when you talked to him?

A. Up in eighty years—I do not know exactly; something over 84, to the best of my recollection; he has been dead about four years. I live near the grave yard, helped to dig the grave and put him away. He lived about ten miles back on Coker creek. On a survey that was made to the best of my recollection in 1871, the Wetmore survey—Mr. Seymour, Gen'l Jarvis and Col. Whittlesey the principal ones—I was along and carried the chain to the Tiptop ridge just about the State ridge. I stretched the tent there,
107 and me and Uncle Ike was put to cooking. We had nothing much to do and we got in conversation, and he told me how that mistake come; that the surveyors had got lost in a fog and run down there till they got to the river and found that they was wrong, and that they did not run the other line, but made a plot calling for the heights of the mountain.

Q. 8. Did he say anything with regard to how he knew it?

A. I won't be certain; I believe he said he was along, but I won't be positive that he did. I was not paying as particular attention as if I was more interested in it.

Exception.—Defendants except to all of the foregoing questions and to the answers brought out by them of this witness, because every statement with reference to what Joseph Graves and Isaac Tate stated to him is purely hearsay testimony, and as such is inadmissible as evidence in this case.

Cross-examination.

Mr. SHIELDS:

Q. 1. You can not say with certainty that either of these men claimed to you that they were on the survey?

A. Uncle Joe Graves did, but I can not say for certain that Mr. Tate was; I can not say for certain, but I believe he did.

Q. 2. How long has that State ridge been known as the State ridge?

A. I can not tell you, for I did not ask how long it had been since the survey had been. It has been called the State ridge ever since I have been in that boundary—20 or 30 years.

Q. 3. Is it not a fact that it was called the State ridge because supposed to be the line between Tennessee and North Carolina?

A. No, sir; I do not know that I ever talked to a man who thought it was the line between Tennesese and North Carolina. It was a leading ridge and went by the name of the State ridge because they made a mistake there.

Q. 4. Is not the State ridge a high, leading ridge that breaks off only by that little river there and immediately takes up in a spur and goes to the top of the mountain on the other side?

A. I cannot describe it, just how this is, for I never followed it through. If it is that way I do not know it; I do not think it is.

Q. 5. You have never been on the top?

108 A. I have crossed it, but have never followed it.

Q. 6. It is one of the main mountains?

A. It is a leading ridge that runs from the mountain down to the river—it is just a ridge.

Q. 7. Well, then, there is a ridge on the opposite side and goes west?

A. I do not know how far that goes up, because as I told you, I never went through west on it; whether the ends hit each other or not, I do not know.

Q. 8. It is a main leading ridge, is it?

A. It is considered a ridge leading to the river, but whether the main leading one I do not know; there may be more leading ridges than that; I do not know. Have hunted through that country, but was not hunting for lines nor State ridges; I was hunting for game.

Re-direct:

Q. 1. The tales that these old men told were currently received as tradition among the neighbors around there, were they not?

A. Yes, sir; it was believed that they was telling the facts.

And further deponent saith not.

H. H. MILLER.

Subscribed and sworn to before me, this Oct. 31, 1900.

[SEAL.] NORMAN B. MORRELL,
Notary Public.

The next witness, JOHN A. MILLER, being duly sworn, deposed as follows:

Q. 1. Where do you live, Mr. Miller, and how far from Telico river, and how long have you lived in that vicinity?

A. I live in Monroe county, about three miles, I reckon from Tellico river at this time. I have lived in Monroe county, I expect, pretty much all my life; was raised there; I was off two years in Illinois.

Q. 2. State your age?

A. I am something over 53 years old.

Q. 3. Mr. Miller, state what you know of Uncle Joe Graves and whether he was the only old man of that name around in that part of Monroe county in the mountains and at Telico for a great many years past?

A. The only man I knew of that name.

Q. 4. He was your uncle, was he not?

109 A. He was my uncle—principally raised me from a boy.

Q. 5. State what you heard him say in regard to the question with regard to the location of the line between North Carolina and Tennessee?

A. I have heard the old man say at different times that he was with the party that run the State line at the time when they made the mistake out there by the fog being down, and that when they found that they was lost and had made a mistake that they made a plat or call around the heights of the mountain—the watershed.

Q. 6. Did you know W. H. Hammonds and about his herding operations?

A. Yes, I knew it from his reports, and I was there while he was herding; I was at his range where his herder was taking care of his cattle.

Q. 7. Where was he herding when you went to him?

A. He was herding up there at the head of Telico, a little on the other side of what they call the State ridge, or about the State ridge.

Q. 8. Did you ever hear Hammonds himself say anything about what right he had to hold?

A. Yes, sir; he said he had a lease from Wetmore's agent and he was paying a range fee; I never asked him what it was. He said he had a perfect right to herd up there.

Exception.—The defendants except to all of the foregoing testi mony of this witness, because all of the matters testified to by him are statements made to him by other men, and his testimony is therefore, purely hearsay and inadmissible as evidence in this case But not waiving this exception, the defendant asks witness the fol lowing questions.

Cross-examination.

Mr. SHIELDS:

Q. 1. You may state whether in the conversation you had with Joe Graves he stated to you that they made calls, of course, and dis tances around the mountains?

A. He said they made calls or a plot around the mountain.

Q. 2. He claimed that those calls were adopted as a part of th line reported to the legislature of the two States?

A. He talked so; yes, sir.

And further deponent saith not.

JOHN A. MILLER.

110 Subscribed and sworn to before me, this Oct. 31, 1900.

[SEAL.] NORMAN B. MORRELL,
Notary Public.

HUGH STEVENSON ET AL.
vs.
JASPER FAIN ET AL. } No. 1153.

The foregoing depositions were taken before me, as stated in th caption, and the same were taken by stenographer, and after havin been typewritten out were read to the witnesses and then by the signed; and I certify that I am not interested in this case, nor kin or counsel to either of the parties. And I have delivered th depositions to J. T. Carter, deputy clerk of the United States circu court at Knoxville, Tennessee, without their being out of my po session or altered after they were taken.

Given under my hand this 31st day of October, 1900.

[SEAL.] NORMAN B. MORRELL,
Notary Public, Knox County.

Bill of Costs.

Norman B. Morrell, taking 3 depositions at.....	$1 00	$3 0
H. Houston Miller, one day's attendance.....	1 00	
70 miles at 4c.....	2 80	
		3 8
John A. Miller, one day's attendance.....	1 00	
76 miles at 4c.....	3 04	
		4 0
B. F. Payne, one day's attendance.....	1 00	
76 miles at 4c.....	3 04	
		4 0
		$14 8

[SEAL.] NORMAN B. MORRELL,
Notary Public.

Endorsed: Filed December 7th, 1900. J. T. Carter, deput clerk.

111 In the United States Circuit Court for the Northern Divisio of the Eastern District of Tennessee.

HUGH STEVENSON ET AL.
vs.
JASPER FAIN ET AL. } No. 1153.

The depositions of J. W. Patton, F. P. Axley, Jasper L. Fai Francis Lovingood, Isaac Lovingood, B. F. Lovingood, and R. A Wilson, witnesses for defendants, taken by agreement before S. W Lovingood, clerk of the superior court, in Murphy, North Carolin January 5th, 1901, at the office of the said clerk, it being agreed tha said depositions shall be taken before said S. W. Lovingood, clerk who shall swear the witnesses before they depose, and shall certif the depositions after they have been typewritten out and signe by the witnesses under a regular certificate to the depositions, unde the laws of the State of North Carolina, and when so taken and ce tified the said Lovingood shall seal them up and forward them t the clerk of the United States circuit court at Knoxville, Tennesse and the fact that said depositions were taken without commissio from the United States circuit court at Knoxville, and before sai clerk and all other formalities are hereby waived, and said depos tions when so taken and filed shall be read as evidence in said caus subject only to exceptions for irrelevancy and incompetency, an shall not be excepted to for want of formal certificate and prope

officer to take the same according to the forms of the United States circuit court.

GREEN & SHIELDS AND
BEN POSEY,
Sol's for Def'ts.
CHARLES SEYMOUR,
Sol. for Compl'ts.

The first witness, Dr. J. W. PATTON, having been duly sworn, deposed as follows:

Q. 1. Dr. Patton, state your name, your place of residence and your age?

A. My name is John W. Patton; my residence is Murphy, North Carolina, and my age was seventy-two last April.

Q. 2. How long have you lived in Murphy?

A. I came to Murphy in 1849.

112 Q. 3. Do you know a place which is commonly called the State ridge?

A. Yes, sir; I have been on it.

Q. 4. How long since you have known that place as the State ridge—not when you first saw it, but when you first heard of any place called the State ridge; how long since?

A. I have heard the State ridge spoken of ever since I came to this country.

Q. 5. When was the first time you were on it?

A. It was either in '59 or '60; I cannot fix the date precisely.

Q. 6. State whether or not you ever had any information from any party who was along with the commissioners who ran the State line between Tennessee and North Carolina, when it was and what they said to you as to where they run? Also, who it was who gave the information to you?

A. I had information from an old man by the name of Graves—William Graves, I think—in '59. I had a conversation with him about the State line, and he told me that he was along when the line was run as a "packer," and that they run down the State ridge, crossed the Telico river below the mouth of Tipton creek, and at a short distance from the creek marked a holly as a line tree; that on one side was marked Tennessee, on the other side North Carolina—86 miles. I went with another party some time after that and hunted that holly, and from that holly, taking the east end of the line struck the point of the State ridge and finding the line there after crossing the river struck the line and traced it up the State ridge over Laurel top to Haw Knob ridge; down Haw Knob ridge over the Haw knob and down through the old Strutton place. There was a gap at the old Strutton place. Beyond this gap we struck the line again and followed it on that main dividing ridge to Big Fodder stack; from Big Fodder stack to near the head of the West prong of Slick Rock creek. The ridge divides at the head of Slick Rock, one ridge running almost due northwest and the other run-

ning due north, and we found that this old line that we had been tracing run down the ridge this side of Slick Rock at the head of the West prong. We traced it down that ridge and just above the fork of Slick Rock, crossed Slick Rock and along on the West prong on the left hand side of Slick Rock for some distance down the creek when we stopped and turned out.

Q. 7. This holly you spoke of, Doctor, which side of the Tellico was it on, east or west?

113 A. West of the creek.

Q. 8. What sized stream is Tellico there?

A. Tellico there is just a little common creek.

Q. 9. State whether or not this ridge makes up from there right on in a westerly direction towards Unacoi mountain?

A. There is a leading ridge runs directly up to Beaver Dam bald.

Q. 10. Now, this State ridge that you say you have heard of ever since you came to this country, from Laurel top on, that is not known as the Unacoi?

A. Oh, no; never heard of it being called that.

Q. 11. Where is the first point that it gets the name of Unacoi that you know of?

A. Beyond Beaver Dam bald.

Q. 12. Standing at Laurel top, Doctor, going or looking in a south west direction, if you had a call to follow the main ridge what ridge would you take naturally?

A. If I was looking for the main trend of the mountain I should look directly across Beaver Dam bald.

Q. 13. Would you follow the State ridge as the main ridge from Laurel top?

A. I think I would.

Q. 14. Doctor, who else did you have any information from besides William Graves with regard to the State line?

A. Old Uncle Jimmie Whittaker.

Exception.—Complainant excepts to all of foregoing questions and answers of witness with regard to what William Graves may have told him as it is purely hearsay testimony and as such is inadmissible in this case.

Q. 15. Who was Uncle Jimmie Whittaker?

A. My understanding at the time I talked to him was that he was one of the surveyors.

Q. 16. How long after the talk you had with Graves until you talked with Whittaker?

A. I think in '60.

Q. 17. State what Whittaker said to you about locating the State line from Laurel top west?

A. He told me they run down the State ridge and marked it; crossed the creek—he used the term creek—and marked a holly tree, the 86th mile tree.

Q. 18. Did you tell him what old man Graves told you or were you asking for information from him as a surveyor?

A. I was asking for information from him to substantiate what old man Graves had said. You may ask why I was so interested—
I will tell you why. Old 'Squire W. H. Maroney, my father-
114 in-law, had entered two 640 acres tracts of land on the head of Slick Rock and he proposed to let me pay for those two tracts of land and have them and I agreed to do it, but before I would do it I told him I would go and trace the line and know whether it was in Tennessee or North Carolina. And he and I went together and traced the line as I have stated. This is the reason I had the talk with Graves and Whittaker. After tracing the line I found the land lying between the line and the top of Little Fodder stack, embracing the larger portion of these two tracts and I refused to pay for the land and take it because half of it lay in Tennessee, and you will find on the old books of Jacob Siler, the land agent, where he delivered up the bonds that he held against W. H. Maroney on consequence of my statements.

Exception.—Complainant excepts with regard to information from Uncle Jimmie Whittaker for same reason as stated in exception with regard to information received from William Graves.

Q. 19. This land you speak of is several miles from the land in this suit in dispute is it not?

A. Yes, sir; twenty-one or two miles.

Q. 20. Did you ever see the rock on the Unaka road which purports to mark the dividing line between Tennessee and North Carolina?

A. Yes, sir.

Q. 21. Now, please state what you saw there?

A. I saw many years ago a rock set up in the ground marked on one side Tennessee and on the other North Carolina—101 miles.

Q. 22. Now, was there anything else marked there as a witness to that stone?

A. A hickory tree within a few feet of it.

Q. 23. How was it marked?

A. Marked the same way.

Q. 24. Now, going from the holly that you saw to this rock on Unaka turnpike would the natural course be to go up the ridge that you say led up there?

A. The natural course would be up the main divide to Beaver Dam bald and then along the main top from there to the stone on Unaka road.

Q. 25. Would that be a natural south west direction from Laurel top, to follow the State ridge?

A. It would be nearly due west.

Q. 26. Would that be the natural way to go, to follow the main ridge to this stone on Unaka road?

A. It certainly would.

Both William Graves and James Whittaker are dead.

115 Cross-examination.

By Mr. SEYMOUR:

Q. 1. How far is this 101 mile stone from Unaka Turnpike road?
A. Close by, right on the side of the road.
Q. 2. About how far is that from the point where the line by way of the State line ridge comes to the top—the main mountain ridge?
A. It is about 15 miles.
Q. 3. About what course is it, Doctor?
A. It is just a very little south of west.

And further deponent sayeth not.

J. W. PATTON.

Sworn to and subscribed before me this Jan. 5th, 1901.

S. W. LOVINGOOD,
Clerk Superior Court, Cherokee County, N. C

Filed January 9th, 1901.

J. T. CARTER,
Deputy Clerk.

NORTH CAROLINA, }
Cherokee County. }

This agreement made on this 22d day of December, 1881, between M. Fain of the first part and R. R. Bell and W. H. Hammond of the second part, M. Fain leases and rents unto said Bell and Hammonds all his bound-ry of lands in Brandon township situated on what is known as the State ridge and head of Tellico river for the term of five years for the purpose — raising such stock. The said Hammond and Bell wants to raise. The said Bell and Hammond to make such improvements as they may desire and to use the same and the products thereof free of rents. The said Bell and Hammonds agree to pay for the privileges aforesaid twenty-five cents per head for five years for all stock ranged except pigs and calves, settlement to be made at the expiration of each and every year.

Witness our hand- and seal-

M. FAIN. [SEAL.]
R. R. BELL. [SEAL.]
WM. H. HAMMOND. [SEAL.]

Witness:
F. P. AXLEY.

116 The next witness, F. P. AXLEY, being duly sworn, deposed as follows:

Q. 1. The defendants offer a lease signed by M. Fain, R. R. Bell and Wm. H. Hammonds, and introduce F. P. Axley to prove it. Mr. Axley was this signed in your presence, and if so please file same as exhibit to this deposition?

A. Yes, sir, signed by all of them in my presence and I herewith file said lease as Exhibit "A" to my deposition.

And further deponent saith not.

F. P. AXLEY.

Sworn to and subscribed before me this Jan. 5th, 1901.

S. W. LOVINGOOD,
[SEAL.] *Clerk Superior Court, Cherokee County, N. C.*

The next witness, JASPER L. FAIN, being duly sworn, deposed as follows:

Q. 1. State if you have examined the line between Tellico and the Unaka road and if you have any evidences of a marked line as a State line state what those evidences are and if you have them with you?

A. Yes, I have examined the line a little on the west side of Tellico river and we taken two juggles from the State line trees showing State line marks, of two trees on the west side of the creek. I have them with me and file them as Exhibits "A" and "B" to my deposition.

Q. 2. What kind of timber are those juggles?

A. Spruce, pine and holly.

Q. 3. What age do they show—about when were the marks made?

A. About '21—growth shows 77 or 78 years.

Q. 4. Was this holly juggle taken from the holly that is marked 86th mile tree?

A. No, sir, a different holly.

Q. 5. Is that on the line that we call the State Ridge line?

A. Yes, sir.

Cross-examination.

By Mr. SEYMOUR:

Q. 1. You are not a married man and have not been a man of your own family, Mr. Fain?

A. No, sir.

117 Q. 2. In your former deposition when you testified as to living out at your place it was the life of a bachelor in your camps was it not?

A. Yes, sir; I am in the stock business. I have a regular house there.

Re-direct examination:

Q. 1. Do you vote in that township?

A. Yes, sir; Beaver Dam township—that is my place of business.

Q. 2. Do you know where the 93 mile stone stands?
A. Yes, sir.
Q. 3. Where?
A. At the head of the West prong of Tellico.
Q. 4. Have you seen it?
A. Yes, sir.

Re-cross examination:

Q. 1. How is it marked?
A. 93 m.
Q. 2. On what kind of a tree?
A. On a stone.
Q. 3. Who set it? And when?
A. McClellan who surveyed the line in 1893.

And further deponent saith not.

JASPER L. FAIN.

Sworn to and subscribed before me this Jan. 5, 1901.

S. W. LOVINGOOD,
[SEAL.] *Clerk Superior Court, Cherokee County, N. C.*

The next witness, FRANCIS LOVINGOOD, having been duly sworn deposed as follows:

Q. 1. What is your occupation?
A. I hold the office of county surveyor.
Q. 2. Have you ever been on the line between Tellico river and the Unaka turnpike, on what is called the State Ridge line?
A. Yes, sir.
Q. 3. The line that the defendants in this suit contend is the true line between North Carolina and Tennessee?
A. Yes, sir.
Q. 4. State whether or not you ever found any marks on the State line between Tellico river and the Unaka turnpike?
118 A. Yes, sir, I have found marks.
Q. 5. State what you found?
A. I found a number of marked trees on the south west side of Tellico. I juggled some trees on that south west side of Tellico.
Q. 6. Please examine the juggles handed herewith to you and state where they came from?
A. I taken this marked "Exhibit B" from a holly on the south west side of Tellico, between Tellico river and Unaka turnpike.
Q. 7. Do you know this juggle marked "Exhibit A" and where did you get it?
A. Yes, sir; got it on the same side of the river between Tellico and Unaka mountain.
Q. 8. Mr. Lovingood, in tracing the line from Tellico creek or

river back along the State ridge have you ever found any signs of defacement of any marks?

A. None at all.

Q. 9. You have not?

A. No, sir.

Q. 10. What marks have you found on that ridge?

A. I found what I taken to be State line marks.

Q. 11. Have you found any sign on timber there where there had been any attempt to deface any marks that had been made?

A. None at all.

Q. 12. You know what is called the State line ridge?

A. Yes, sir.

Q. 13. Where the Tellico creek or Tellico river run through the State ridge how would it seem to an ordinary observer there—state whether or not it seems to be a continuous ridge?

A. The State ridge comes down to the river and on the opposite side of the river the same ridge makes up to the top of the mountain.

Q. 14. What is the character of the stream up there as to size?

A. Small stream—not a large stream at all.

Q. 15. There are a number of large creeks running into Tellico below this State ridge are there not?

A. Yes, sir, I suppose so; I am not well acquainted with the country down there.

And further deponent saith not.

FRANCIS LOVINGOOD.

Sworn to and subscribed before me this Jan. 5, 1901.

S. W. LOVINGOOD,

[SEAL.] *Clerk Superior Court, Cherokee County, N. C.*

119 The next witness, ISAAC LOVINGOOD, having been duly sworn deposed as follows:

Q. 1. How old are you Mr. Lovingood?

A. Sixty-eight.

Q. 2. Where do you live?

A. Live on Hanging Dog in Cherokee county, and have lived there since I was six years old.

Q. 3. Do you know where the State ridge is?

—. ——.

Q. 4. How long have you known that place as the State ridge?

A. Well, sir, I guess it has been fifty years since it went by the name of the State ridge.

Q. 5. Do you know why it was called the State ridge?

A. I suppose because the State line between Tennessee and North Carolina run on that ridge.

Q. 6. Do you know M. Fain?

A. Yes, sir.

Q. 7. State what if anything he ever said to you about you and your brother ranging cattle in that territory?

A. Well, something like 20 years ago he complained to me and one of my cousins and said that we boys ought to help him pay his taxes a little on ranging cattle on his land; we asked how much and he said ten cents on the head would help him pay the taxes, and we paid him ten cents on the head of cattle.

Q. 8. Where were you and your cousin ranging cattle?

A. From where Jasper Fain now lives on out to the head of Tellico.

Q. 9. M. Fain was claiming that land then?

A. Yes, sir.

Q. 10. Did you ever hear of the line around by McDaniel bald and Jenks knob and around that way being called the State line?

A. No, sir.

Q. 11. Not till when?

A. It has been only six or eight years—since these suits came up.

Q. 12. Where did you always understand the State line to be?

A. Down the ridge I spoke of as the State ridge.

And further deponent saith not.

I. LOVINGOOD.

Sworn to and subscribed before me this Jan. 5, 1901.

S. W. LOVINGOOD,

[SEAL.] *Clerk Superior Court, Cherokee County, N. C.*

120 The next witness, B. F. LOVINGOOD, having been duly sworn, deposed as follows:

Q. 1. Mr. Lovingood do you know where the State ridge is?

A. Yes, sir.

Q. 2. How long have you known it?

A. I have known it I reckon forty years being called the State ridge.

Q. 3. Was it ever pointed out to you as the State line between Tennessee and North Carolina?

A. Yes, sir.

Q. 4. How long ago has it been since it was shown you?

A. Forty years.

Q. 5. What did you see there?

A. The man I was with showed me some trees marked and told me that was the State line—on the other side was Tennessee, on this side North Carolina. Showed me a tree or two marked down the ridge from where Jasper Fain lived.

Q. 6. Since that time have you always known that as the State ridge?

A. Yes, sir; never anything else.

Q. 7. When you cross that creek there and make up on the other side does the ridge continue on?

A. The State ridge as we call it points down to the creek and then starts up on yan side.

Q. 8. When does it begin to be called Unaka mountain?
A. I suppose immediately after it crosses the river.
Q. 9. Do you know where Beaver Dam bald is?
A. Yes, sir.
Q. 10. Does that ridge lead up to Beaver Dam bald towards Unaka road?
A. Yes, sir.
Q. 11. You say you saw marked trees on it?
A. Yes, sir, I seed marks.

Cross-examination.

By Mr. SEYMOUR:

Q. 1. Did I understand you to say Unaka comes down to the Tellico river, called creek?
A. That has been my understanding—that Unaka mountain extends to Beaver Dam bald.
Q. 2. How far is it from Tellico to Beaver Dam bald?
A. I suppose it is two miles.
Q. 3. Up to about ten years ago that country was very thinly settled was it not?
121 A. Yes, sir, I think so.
Q. 4. Ten years ago were there any people living there between the lines?
A. Yes, sir; there has been families living there I expect twenty years. The first that moved in that I recollect of was old man Hoss and Woody and I expect it was twenty odd years ago.

And further deponent saith not.

B. F. LOVINGOOD.

Subscribed and sworn to before me this Jan. 5, 1901.

S. W. LOVINGOOD,
[SEAL.] *Clerk Superior Court, Cherokee County, N. C.*

The next witness, R. A. WILSON, having been duly sworn, deposed as follows:

Q. 1. Mr. Wilson, do you know this line that they call the State ridge line?
A. Yes, sir, I think I do.
Q. 2. Do you know where Laurel top is?
A. Yes, sir, I know very well where Laurel top is.
Q. 3. Going in a southwest direction from Laurel top towards the Unaka turnpike how would you naturally go?
A. I would go down the State ridge if I was going to follow the main ridge?
Q. 4. Did you ever travel down that ridge?
A. Yes, sir, a number of times.

Q. 5. Are there any evidences of State line marks on that ridge?

A. Yes, sir.

Q. 6. After crossing Tellico creek did you ever follow that line up towards Unaka turnpike?

A. Yes, sir, I have been out that line as far as the head of the West prong of Tellico.

Q. 7. What is the character of the stream where the State line runs to the creek or river and the other ridge makes up?

A. It is a small stream.

Q. 8. Does the same ridge seem to continue on after crossing the creek?

A. Yes, sir; looks like the creek has cut them in two in time.

Q. 9. In ascending that ridge going towards Unaka do you find any evidences of a line?

122 A. Yes, sir.

Q. 10. What?

A. I have seen several marked trees up to the top where they claim this line intersects.

Q. 11. When were you along the line?

A. I have not been along the line since last fall on that side of the river—it is something like a year ago.

Q. 12. What streams come into Tellico below this State ridge?

A. Do you want the first or as many as I can give the names of? Rough ridge, Sycamore creek, the North prong and on the other side Kirklands creek and there may be others.

Q. 13. At the place where this line crosses it is a very small creek is it not?

A. Yes, sir.

Q. 14. Do you know where the stone stands marked as the 93d mile stone or post by McClellan?

A. Yes, sir.

Q. 15. Where?

A. Southwest from Beaver Dam bald at what we call the head of the West prong of Tellico.

Q. 16. You have seen that?

A. Yes, sir.

Cross-examination.

By Mr. SEYMOUR:

Q. 1. How large a stream is the West prong of Tellico?

A. I was never down on it and cannot tell you.

Q. 2. How do you know it was at the head?

A. Because Mr. Bryson and others who lived there told me so—Mr. Samuel Bryson.

Q. 3. You could not tell it of your own knowledge then from any other stream?

A. I could tell from the locality of the country that the water run into Tellico.

Q. 4. How far is it to the head of Tellico river from where you cross it at the foot of the State ridge?

A. I reckon it is something like three to three and a half miles to the very head of it.

Q. 5. You think none of the streams are longer than that?

A. No, sir, I do not think they are.

Q. 6. What is your occupation, Mr. Wilson?

A. I am out there farming and looking after cattle.

Q. 7. Working for Mr. Fain?

A. No, sir.

Q. 8. Have you ever worked for him?

123 A. Two or three days at a time, but I do not call that working for a man to amount to anything.

Q. 9. How old are you, Mr. Wilson, and where do you live now?

A. The best I can give as to my age is 40 years. I live on the head of Tellico.

Q. 10. On whose land?

A. Mr. Hosshaw's.

Q. 11. Mr. Hosshaw is one of the parties to this suit, is he not?

A. Yes, sir, I suppose so.

And further deponent saith not.

R. A. WILSON.

Sworn to and subscribed before me this Jan. 5, 1901.

[SEAL.] G. W. LOVINGOOD,
Clerk Superior Court, Cherokee County, N. C.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee, at Knoxville.

HUGH STEVENSON, MATILDA C. ALLOWAY, Paul E. Stevenson, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Husband, James L. Kernochan, and George P. Wetmore *vs.* WILLIAM FAIN, ROBERT FAIN, JOHN FAIN, Jasper Fain, Allan Fain, Florence Hosshaw and Her Husband, Abraham Hosshaw.	In Equity. No. 1153.

Depositions of W. D. Hale and Zimri Roberts, taken the 7th day of December, 1900, at the office of Charles Seymour, Knoxville, Tennessee.

W. D. HALE, witness for complainants, recalled by agreement.

(CHARLES SEYMOUR, Esq.:)

Q. 1. I herewith hand you printed copies of twenty-two grants introduced by agreement, numbers, 5985, 5982, 5605, 5606,

124 5607, 5981, 5603, 6120, 5604, 5609, 6121, 6122, 6149, 6123, 5980, 5608, 5610, 5966, 6151, 6150, 5969, 5965; also copies (Ex. "A"), deed F. W. Lea to M. W. Wetmore—one deed (B); 2 deeds Moses W. Wetmore to William S. Wetmore, registered as "O" (C & D) 534 and "O" 426; also copy grant 7660 to John Blackburn, E; also deed Blackburn heirs to Geo. Peabody Wetmore, F; also 4 copies grants 7775 G, 7776 H, 8966 J, 7785 K; also copies deed John M. Lea to E. Henegar L; M. L. Henegar *et al.* to E. Henegar M; copy power of attorney Luke Barnard to James Barnard N; and E. Henegar to George Peabody Wetmore O, and ask referring to Exhibit "F" to deposition of O. W. ("P") Muller, the original of which is here shown you, if the above title papers cover all of the land included in the seventh range as shown by the Ocoee district plat, and whether they purport to vest title in William S. Wetmore and George Peabody Wetmore?

A. I have compared the title papers presented to me with the map of the seventh range, Ocoee district, and find that the grants numbered and marked on the map and the title papers conveying said land cover all the lands in second fractional township range seven east of the Ocoee district. The bulk of the land is conveyed by Francis W. Lea in deed to Moses W. Wetmore, and by two deeds Moses W. Wetmore to William S. Wetmore.

Q. 2. Please file the papers here shown you as exhibits to this deposition.

A. I herewith file them as Exhibits A, B, C, D, E, F, G, H, J, K, L, M, N, O, P, to my deposition.

Q. 3. I show you the original bill in this cause from the record which is presented to you—state if the title papers above shown include all the land within the boundary in dispute as shown by the bill and answer in this cause.

A. They do.

Q. 4. State what occupation by tenants on the part of Wetmore and Stevenson you have ever known within the land in dispute.

A. In 1893 Amanda Graves took a lease under me acting for Wetmore and Stevensons, and Mrs. Rhodes and her daughter jointly took a lease within the boundary described in these papers, and a short time before that Mr. Zim Roberts took a lease under George W. Metcalfe acting for Wetmore and Stevensons; I think I signed this as a witness.

Exception.—Defendants except to the answer of the witness wherein he states that leases were taken by the different parties named in
125 his answer because the leases themselves are the best evidence of what they are, when they were taken and what land they cover and this parole testimony of the witness is incompetent to prove anything, and defendants move to strike out the answer from the testimony as evidence.

BEN POSEY AND
GREEN & SHIELDS,
Sol's for Defendant-.

Q. 5. Were these people you describe as tenants there occupying the premises?

A. Yes, sir.

Q. 6. Do you know how long they remained there—if so, state?

A. Zim Roberts remained until he was moved about a year and a half ago. I do not know how long the others remained.

Q. 7. You say you took leases—do you know what became of the writings?

A. I sent a copy of the writings—Mandy Graves and the Rhodes party to Charles Seymour, at Knoxville—I do not know what became of the other.

Q. 8. Do you know where any of these writings are now?

A. I do not know.

Q. 9. Examine the papers I herewith hand you, one purporting to be a contract of lease between G. P. Wetmore and others and Joseph Presswood and Zimariah Roberts, the other the same lessors N. M. Rhodes and Buena Rhodes, and state if these are the instruments that you witnessed duly executed by the tenants, and file same as exhibits.

A. Yes, sir, these are the papers about which I testified.

Q. 10. How did you happen to be there and issue these leases?

A. I was sent there to receive possession from the officer who went to execute a writ of possession for Wetmore from the United States court; he formally dispossessed the Rhodes and I received possession for Wetmore and gave this lease. I file the two papers as Exhibits "Q & R" to my deposition.

Cross-examination.

(S. G. SHIELDS, Esq.:)

Q. 1. Who wrote these exhibits that you have just filed?

A. They were written with typewriter principally and filled
126 in with pen. The one to Roberts was filled in, I think, by George W. Metcalfe; the other filled in by myself.

Q. 2. Where were they typewritten?

A. I do not know.

Q. 3. Where did you get them?

A. I received them through the mail.

Q. 4. From whom?

A. From Mr. Seymour.

Q. 5. You say that you went there with an officer who went to dispossess these parties on a writ in favor of Wetmore?

A. Wetmore and Stevenson—Stevenson heirs at least.

Q. 6. And you received this Rhodes possession from the officer and then took this paper?

This contract and lease, made this 22d day of February, A. D. 1893, between George Peabody Wetmore and the heirs of V. K.

Stevenson, to wit: Hugh Stevenson, Matilda E. Alloway and N. E. Alloway, Eloise Stevenson Kernochan and J. L. Kernochan, Paul E. Stevenson and Maxwell Stevenson, lessors, and Joseph Presswood and Zimariah Roberts, as tenants:

Witnesseth: That in renewal of previous leases, the said Wetmore and Stevenson heirs, lease and let, and the said Presswood and Roberts take as tenants the following described land, situate in 20 civil district of Monroe county, Tennessee, further described as follows:

All of fractional township two in range seven east of the basis line in the Ocoee district, bounded on the north, east and south by the divide of the waters of Telico river from the waters of Snow Bird, Beaver Dam and Hanging Dog creeks, on the North Carolina side, and including in this lease all the land on the waters of Telico river in said township, estimated at 7114 acres.

Also in fractional township two south range six east, sections thirty-one and thirty-two, making 1280 acres.

Also in fractional township two south range six east, west half of section five, all of section six, all of fractional section seven, and northwest fractional quarter of section eight, estimated at 1660 acres. On the following terms and conditions:

This lease gives tenancy at will of lessor and tenancy in common with other tenants of said lessors, on all of said land, but so much of the above land as is below described, to wit:

The land now actually inclosed and occupied by said tenant on the waters of Telico river, including fields and houses and their appurtenances as well as the Bryson place.

127 The said lessors agree to allow said tenant the use of until notice given that the land is required by lessors, and this notice shall be given so as to allow time to remove annually planted crops that have been put in before notice.

The said tenant agrees not to sublet nor assign this lease without the written consent of lessors; the right is also reserved to lessors to enter for mining and lumbering and road making work of its own, or its assignees or contractors, on any part of said property at any time, but if growing annual crops are disturbed it will pay for actual injury to them. The said tenant agrees to pay rent two dollars a year, payable October 15th, which has been paid for 1893 in lodging for party, and to hold all of said land as first described above for said lessors, and to deliver possession only to the order of said lessors; to waste no timber, and to look after the interests of said lessors so far as possible.

No timber is to be cut except what is necessary to keep up fencing, and fire wood made from the laps and tops of trees cut for rails. No poplar, walnut, ash or cherry timber is to be cut for any purpose, rails or buildings, and no tanbark peeled, or chestnut oaks cut. No more land cleared without written permission from said lessors.

Any violation by the tenant of the terms of this lease shall, at option of lessors, terminate this lease, and entitle lessors to imme-

diate possession of the premises. Said tenants hereby release to said lessors any and all claims on any of said land.

Witness our hands, this 22d day of February, A. D. 1893.

his
JOSEPH x PRESSWOOD,
mark.
his
ZIMRIAH x ROBERTS,
mark.

By hand of JOS. PRESSWOOD.

Attest:
G. W. METCALFE.
G. W. TALLENT.
W. D. HALE.

Exhibit "Q" deposition of W. D. Hale. Stevenson *et al. vs.* Fain *et al.* Norman B. Morrell, notary public.

128 This contract and lease, made this 25th day of May, A. D. 1893, between George Peabody Wetmore and the heirs of V. K. Stevenson, to wit: Hugh Stevenson, Matilda E. Alloway, and N. E. Alloway, Eloise Stevenson Kernochan and J. L. Kernochan, Paul E. Stevenson and Maxwell Stevenson, lessors, and N. M. Rhodes and Buna Rhodes, as tenant-.

Witnesseth: that, in renewal of previous leases, the said Wetmore and S-evenson heirs lease and let, and the said N. M. and Buna Rhodes takes as tenant- the following described land, situate in 17th civil district of Monroe county, State of Tennessee, further described as follows:

All of fractional township two in range seven east of the basis line in the Ocoee district, bounded on the north, east and south by the divide of the waters of Telico river from the waters of Snow Bird, Beaver Dam and Hanging Dog creeks, on the North Carolina side, and including in this lease all the land on the waters of Telico river in said township, estimated at 7114 acres.

Also in fractional township two south range six east, sections thirty-one and thirty-two, making 1280 acres.

Also in fractional township two south range six east, west half of section five, all of section six, all of fractional section seven, and northwest fractional quarter of section eight, estimated at 1660 acres. On the following terms and conditions:

This lease gives tenancy at will of lessors and tenancy in common with other tenants of said lessors on all of said land, but so much of the above land as is below described, to wit:

The land now actually inclosed and occupied by said tenant on the waters of Telico river, including fields and houses and their appurtenances.

The said lessors agree to allow said tenant the use of until notice given that the land is required by lessors, and this notice shall be given so as to allow time to remove annually planted crops that have been put in before notice.

The said tenant agrees not to sublet nor assign this lease without the written consent of lessors; the right is also reserved to lessors to enter for mining and lumbering and road making work of its own, or its assignees and contractors, on any part of said property at any time, but if growing annual crops are disturbed it will pay for actual injury to them. The said tenant agrees to pay rent one ($1.00) dollar per year, payable on October 15th, and to hold
129 all of said land as first described above, for said lessors, and to deliver possession only to the order of said lessors; to waste no timber, and to look after the interests of said lessors so far as possible.

No timber is to be cut except what is necessary to keep up fencing, and firewood made from the laps and tops of trees cut for rails. No poplar, walnut, ash or cherry timber is to be cut for any purpose, rails or buildings, and no tanbark peeled, or chestnut oaks cut. No more land cleared without written permission from said lessors.

Any violation by the tenant of the terms of this lease shall, at option of lessors, terminate this lease, and entitle lessors to immediate possession of the premises. Said tenants hereby release to said lessors any and all claims on any of said land.

Witness our hands this — day of ——, A. D. 1893.

her
N. M. x RHODES.
mark.
her
BUNA x RHODES.
mark.

Attest:
W. D. HALE.
G. W. TALLENT.
J. A. MANIS.

Exhibit "R" deposition of W. D. Hale. Stevenson *et al. vs.* Fain *et al.* Norman B. Morrell, notary public.

A. Yes, sir.

Q. 7. Had there been any previous lease by the parties whom you were representing to Rhodes and daughter and Presswood and Roberts—do you know of any?

A. I do not.

Q. 8. Then if it is a fact that you went there to receive the possession under this writ of possession and made the lease for the parties whom you represented, the following, to wit—"that in renewal of previous leases the said Wetmore and Stevenson heirs lease and let and the said N. M. Rhodes and Buena Rhodes take as tenant the following described land," etc.—is false, is it not?

A. So far as I know it may be—I do not know anything of previous leases.

Q. 9. Was that writ of possession against these parties who signed these leases?

A. I do not think their names were mentioned in it—it only described places known by their local names.

130 Q. 10. And did not direct these parties to be put off the land?

A. As I recollect it, it demanded the possession of certain places and the Rhodes parties were on one of these places described.

Q. 11. Were N. M. Rhodes, Buena Rhodes, Joseph Presswood and Zimariah Roberts on any of the property claimed by the defendants in this case?

A. I do not know the property that their title papers cover.

Q. 12. You can not say then that either of these parties were occupying any part of the land that the defendants in this cause are claiming under grants from North Carolina?

A. I can state as to their claim, but can not state as to their title papers, never having seen them, only for a small tract of land.

Q. 13. Were either of the parties who signed this paper in possession of that tract of land where Jasper Fain now lives?

A. No, sir, I think not.

Q. 14. Then you can not say of your own knowledge that these parties were on any part of the lands that are claimed by the defendants to this law suit?

A. On land claimed, but I do not know whether according to the title papers.

Q. —. Which one of the Fains claimed lands covered by these leases which you have filed?

A. Heirs of Mess Fain—I think it was jointly claimed.

Q. 16. Do you know the lands that are in dispute in this cause?

A. Yes, sir, I know the country in there.

Q. 17. Do you know the fact that this law suit only involves a part of the lands that were claimed to be owned by complainants in this cause in the disputed territory between North Carolina and Tennessee?

A. No, I do not know that.

Q. 18. Is it not a fact that by taking these leases for your employers you were simply attempting to get a possessory claim on these lands for your employers?

A. No, I do not know that to be a fact.

Q. 19. What were your instructions about the matter when you went there?

A. To receive possession from the officer and take leases from such as would lease.

Q. 20. Well, you found the Fains in possession of a part of the property?

A. Yes, sir.

Q. 21. And they refused to lease from you?

131 A. Yes, sir.

Q. 22. They refused to give up possession of the lands they were claiming?

A. Yes, sir.

Q. 23. Then, now, I want you to answer this question: Were

these parties, Rhodes, Presswood and Roberts, in possession of that land that the Fains were claiming and refused to give up possession to?

A. I do not know whether Fain claimed at that time where Rhodes lived or not—I can not state positively as to that.

Q. 24. Then Rhodes were living on the land, according to your understanding, as the Fains' tenants, were they not?

A. I do not think that they were.

Q. 25. Then the Rhodes were simply squatters or trespassers?

A. I so reported them as squatters.

Q. 26. Did not the Rhodes tell you at the time you went there that they were living on Sudderth lands and not on Fain's land?

A. I do not remember that if they did.

Q. 27. When you took this lease from the Rhodes did you think you were taking a lease from Fains for any part of the land?

A. No, sir.

Q. 28. You did not think the Rhodes represented the Fains in making that lease to them, did you?

A. No, sir, representing themselves.

Q. 29. Don't you know the fact that the place where the Rhodes were living was on the land claimed by one Sudderth, and not on land that the Fains set up any claim to whatever?

A. No, sir, I do not know that fact.

Q. 30. Do you know that this is not a fact?

A. No, sir, I do not.

Q. 31. How much land did you lease to Roberts?

A. Do not remember.

Q. 32. About how much?

A. Do not remember that—did not draw the lease; only signed as witness.

Q. 33. How much did you lease to Rhodes?

A. Do not remember that—the lease will show.

Q. 34. Is it not a fact that you simply took nominal rents in these leases of one dollar per year in order to get a possessory claim for your employers?

A. I do not know what the object of the lease was—my recollection is that it was a nominal rent, but I do not know the object; simply acted according to my instructions.

132 Q. 35. Did either of these parties who signed these leases you have filed with your deposition claim any title to any of the land there?

A. No, sir.

Q. 36. Where is the Hog Jaw ridge situated?

A. I do not know.

Q. 37. Did you ever hear of the Hog Jaw ridge?

A. I do not know; I think I have.

Q. 38. When did you hear of it?

A. I heard of it some time last January.

Q. 39. How?

A. I heard a ridge described as the Hog Jaw ridge in giving my deposition.

Q. 40. What ridge?

A. What is known as the State ridge.

Q. 41. Had you ever heard of it being called that before?

A. No, sir.

Q. 42. Is it known in that country as the Hog Jaw ridge?

A. Not that I know of.

Re-direct examination:

Q. 1. Referring to the writ of possession which the officer had when you went out in 1893, against sundry parties, were any of these p-ople whom you dispossessed living there as successive tenants of some of the defendants named against whom the writ issued?

A. I think they were—the Rhodes were on what is known as the Hoss place and Columbus Hoss was one of the defendants mentioned in the writ of possession.

And further deponent saith not.

W. D. HALE.

Subscribed and sworn to before me this 7th December, 1900.

[SEAL.] NORMAN B. MORRELL,
Notary Public.

ZIMRI ROBERTS, having been duly sworn, deposed as follows:

(T. E. H. MCCROSKEY, Esq.:)

Q. 1. How old are you, Mr. Roberts?

A. 48 years old.

Q. 2. Where were you born and raised?

A. I was born and raised in Cherokee county, North Carolina.

133 Q. 3. How long have you been living within the boundaries of the land in dispute—that is, between the line as claimed by North Carolina and the line as claimed by Tennessee?

A. About seven or eight years.

Q. 4. State whether you took a lease from the complainants, and if so, when you took it.

A. I taken a lease when I first went in there from Mr. Seymour.

Q. 5. Same lease filed a while ago as part of the deposition of W. D. Hale?

A. Yes, sir.

Q. 6. State whether or not you were in possession of that land after that, and if so, how long.

A. I stayed in possession until about a year and a half ago—the Fains sent officers there and dispossessed me.

Q. 7. When were you dispossessed—what day?

A. I do not remember just what day—about the last of March or first of April a year ago.

Q. 8. State what other circumstances occurred at the time you were dispossessed.

A. The sheriff of Monroe county and a revenue officer was staying at my house—they had come to dispossess Jasper Fain.

Q. 9. State whether or not the revenue officer and sheriff were arrested by the officers from North Carolina.

A. Yes, sir; the officers come over from North Carolina and arrested them right at my house.

Q. 10. State whether or not you were dispossessed on the same day?

A. Yes, sir; I was dispossessed on that same day, April 29th.

Q. 11. State whether or not the Fains claimed this same land that you were occupying as a tenant of Mr. Seymour for Wetmore and Stevensons?

A. Old man Fain in his lifetime did not claim it; he claimed it was vacant land.

Q. 12. What did his heirs claim?

A. They come in there and brought a surveyor and located it and took my premises in possession where I was living.

Q. 13. Then they claimed the land?

A. Yes, sir.

Cross-examination.

(S. G. SHIELDS, Esq.:)

Q. 1. How much land were you in possession of?

134 A. I think I had a range lease on the whole boundary—all in the disputed territory.

Q. 2. Your lease is in writing?

A. Yes, sir; typewritten.

Q. 3. How much did you have actual possession of?

A. I do not know how many acres; had three or four acres cleared. Had about 40 cleared below the line.

Q. 4. Did you live on the premises where the Fains claimed when they put you off?

A. Yes, sir.

Q. 5. House on that part?

A. Yes, sir.

Q. 6. Three or four acres in the possession?

A. Yes, sir.

Q. 7. You stated that you had so many acres cleared but below the line, what line?

A. Below where North Carolina claimed the State line to be.

Q. 8. You mean, then, that the bigger part of what you had cleared was down in Tennessee on the side of the line where it is claimed to be by North Carolina?

A. Yes, sir; in Tennessee below where North Carolina claims the State line.

Q. —. You were only in possession of about 5 acres on the North Carolina side of the line?

A. Three or four acres—somewhere along there.

Q. 10. Where did you come from?

A. North Carolina.

Q. 11. How did you happen to move in there?

A. I just come in to try to raise and herd some stock.

Q. 12. Were you there when you signed this paper that has been filed by Mr. Hale?

A. I was fixing to move there; lived over in the settlement.

Q. 13. Then you had never been in possession of these lands before.

A. I was building there, but had not moved.

Q. 14. Who did you get permission from to build there?

A. Not anybody.

Q. 15. You just went in and squatted?

A. Yes, sir.

Q. 16. According to the way that the Fain heirs had the land run out, how far was your house and the three or four acres there inside of that line?

A. Inside of their line a couple hundred yards, I reckon.

Q. 17. Is it not a fact that old man Fain claimed lands on the North Carolina side?

135 A. No, sir; he did not claim this; he told me he owned beyond Cones camp.

Q. 18. Do the Fain heirs claim the Cones camp now?

A. Yes, sir.

Q. 19. Did you not rent this land up in there where Jasper Fain lives from old man Fain?

A. Hammonds had them leased and that is where we got up this talk.

Q. 20. Was that W. H. Hammonds?

A. Yes, sir.

Q. 21. Did he lease from Fain?

A. Yes, sir.

Q. 22. For how long?

A. Five years.

Q. 23. When?

A. Fifteen or sixteen years ago.

Q. 24. Were you not a witness in a case of the State of North Carolina against Hall and Dockery who were prosecuted for the murder of Bryson?

A. Yes, sir.

Q. 25. Do you know where the State ridge is?

A. Yes, sir; I know what they call the State ridge.

Q. 26. Do you know why it was called the State ridge?

A. No, sir; always called the State ridge; I do not know why—it was named before I was born and raised.

Q. 27. Always known as the State ridge?
A. Yes, sir.
Q. 28. Was it not called the State ridge because it was understood that the State line ran down that way?
A. I do not know anything about that.
Q. 29. Was not Bryson killed on that State ridge?
A. Yes, sir.
Q. 30. In that trial of those parties for the killing of Bryson did you not testify that Bryson was on the Tennessee side of the State line when he was killed?
A. I said if the State line ran to the top of that ridge his body was lying in Tennessee, and that the shot came from the North Carolina side.
Q. 31. Was there not a State line tree standing right there on the top of that ridge marked with State line marks where you saw indications that these parties had stood when they shot Bryson?
A. They run the State line after he was killed and run over the stump—the tree had fell.
Q. 32. Is it not a fact that the defense in that case was that Bryson was in Tennessee when he was shot?
A. I do not know anything about that so far as that is concerned.
136 Q. 33. Is it not a fact that the defense was based on your testimony to the effect that Bryson was on the Tennessee side of the State line on top of the State ridge?
A. I told them if the State line run to the top his body was lying in Tennessee and he was shot from the North Carolina side.
Q. 34. Do you know where Laurel top is?
A. Yes, sir.
Q. 35. How far west of Laurel top was the body lying on top of the State ridge?
A. I guess near three miles.
Q. 36. That is, you mean it is three miles from Laurel top westwardly towards Telico river?
A. Yes, sir.
Q. 37. Was he not lying on the same ridge that Laurel top is on?
A. Yes, sir.

Re-direct examination:

Q. 1. The lease that you say Hammonds had from Messer Fain—did it cover the land where you lived?
A. No, sir; Mr. Fain did not claim that—he told us he did not own it.
Q. 2. Now, then, state whether or not Mr. Hammonds had a lease from Wetmore and Stevenson?
A. Yes, sir; also had a lease from Wetmore and Stevenson.
Q. 3. Which was the older lease—the lease from Wetmore and Stevenson or the lease from Fain?
A. The lease from Wetmore and Stevenson was the oldest, but the

first cattle he ever taken in there was before he went to the improvement where Jasper Fain lived. He got a lease from Mr. Seymour and told me about having this lease from Mr. Seymour; he stated to me he did not want to be getting tangled up in any dispute and he would take a lease from all of them.

Re-cross examination:

Q. 1. Is it not a fact that both Wetmore and Stevenson and Messer Fain were claiming lands in that section and it was uncertain where the boundaries ran between the lands respectively?

A. It was claimed by both parties, was my understanding, and that was why Hammonds taken two leases; kept cattle one year and did not have a lease from Fain. A few years before he taken lease where Jasper is, I was helping on the improvement where Jasper lives with Hammonds, and he read me all the papers he had.

137 And further deponent saith not.

his
ZIMRI x ROBERTS.
mark.

Sworn to and subscribed before me this 7th December, 1900.

[SEAL.] NORMAN B. MORRELL,
Notary Public.

Deposition- Hale and Zimri Roberts and Exhibits A, B, C, D, E, F, G, H, J, K, L, M, N, O, P, Q, R thereto. Ex. "P" same as "F" in deposition of O. W. Muller, being copy from register's office, Ocoee dist., plat T. 2, R. 7 E.

Bill of Costs.

Norman B. Morrell, N. P., taking 2 depositions at $1.00		$2 00
W. D. Hale, witness, one day's attendance	$1 00	
90 miles at 4c	3 60	
		4 60
Zimri Roberts, witness, one day's attendance	1 00	
90 miles at 4c	3 60	
		4 60
		$11 20

NORMAN B. MORRELL,
Notary Public.

Endorsed: Depositions of W. D. Hale and Zimri Roberts. Filed Feb. 13, 1901. J. T. Carter, deputy clerk.

EXHIBIT "A" TO DEPOSITION OF W. D. HALE.

No. 5986.

The State of Tennessee to all to whom these presents may come, Greeting:

Know ye, that in consideration of two entries made in the entry taker's office of the Ocoee district, of No. 8037 & 8038, dated the 25 day of July, 1842, by Francis W. Lea as general enterer: there is granted by the said State of Tennessee, to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing two hundred and forty 4 acres, lying in the county of Monroe, in the said district, situate in the 7th range east of the basis line fractional township two and 5 section, being the northwest and southwest fractional quarter- of said section, beginning at the no. west corner of said quarter, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

138

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 6th day of September in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25th day of October, 1842.

The within is a true copy from the records in my office. Cleveland, Tennessee, January 24, 1851.

FRANC. W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 57. Registered in Book O, page 478.

Witness my hand at office in Madisonville.

WILLIAM G. BAGLE,
Register of Monroe County, Tennessee.

No. 5982.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district of No. 8038, dated the 25 day of July, 1842, by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and
139 his heirs, a certain tract or parcel of land, containing 160 acres, lying in the county of Monroe, in the said district, situate in the 7th range east of the basis line fractional township 2 south and 6 section, being the southwest quarter of said section, beginning at the southwest corner of said quarter; with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 6th day of September in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st October, 1842.

The within is a true copy from the records in my office. Jan. 24, 1851.

FRAN'S W. LEA,
Register, &c, of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 57. Registered in Book O, page 479.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5605.

The State of Tennessee to all to whom these presents shall come Greeting:

Know ye, that in consideration of three entries made in the entry taker's office of the Ocoee district, of Nos. 7571, 7572 & 7573,
140 dated the 19th day of May, 1842, by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing four hundred and eighty acres, lying in the county of Monroe, in the said district, situate in the 7th range east of the basis line fractional township two and sixth section, being the northeast, southeast & northwest quarters of said section, beginning at the no. east corner of said quarter, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 27th day of July in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25th October, 1842.

JANUARY 20TH, 1851.

The within is a true copy from the records in my office at Cleveland, Tennessee, Book I.

FRAN'S W. LEA,
Register, &c, of the Ocoee District.

The within is a true copy from the records in my office. Cleveland, Tennessee, Jan. 24, 1851.

FRAN'S W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56. Registered in Book O, page 469.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

141 No. 5606.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district, of No. 7574, dated the 19th day of May, 1842, by Francis W. Lea as general enterer: there is granted by the said State of Tennessee, to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing one hundred and sixty acres, lying in the county of Monroe, in the said district, situate in the 7th range east of the basis line, fractional township two and seventh section, being the northeast quarter of said section, beginning at the no. east corner of said quarter, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 27th day of July in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st day of October, 1842.

JANUARY 20TH, 1851.

The within is a true copy from the records of my office, Cleveland, Tennessee. Book I.

FRAN'S W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56. Registered in Book O, page 470.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

142 No. 5607.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district, of No. 7475, dated the 19th day of May, 1842, by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing one hundred and sixty acres, lying in the county of Monroe, in the said district, situate in the 7th range east of the basis line, fractional township two and seventh section, being the northwest quarter of said section, beginning at the northwest corner of said quarter, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 27th day of July in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st October, 1842.

JANUARY 20TH, 1851.

The within is a true copy from the records in my office at Cleveland, Tenn., Book I.

FRAN'S W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56. Registered in Book O, page 470.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

143 No. 5981.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district, of No. 8042, dated the 25 day of July, 1842, by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing one hundred and sixty acres, lying in the county of Monroe, in the said district, situate in the 7th range of the basis line fractional township two and seventh section, being the southwest quarter of said section, beginning at the so. west corner of said quarter, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the — day of —— in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st day of October, 1842.

The within is a true copy from the records in my office, Cleveland, Tennessee, Jan. 26, 1851.

FRAN'S W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56. Registered in Book O, page 474.

144 Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5603.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of three entries made in the entry taker's office of the Ocoee district, of Nos. 7565, 7566, 7567, dated the 19th day of May, 1842, by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing four hundred and eighty acres, lying in the county of Monroe, in the said district, situate in the 7th range east of the basis line fractional township two and eighth section, being the southeast, southwest and northwest quarters of said section, beginning at the so. east corner of said quarter, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 27th day of July in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25 October, 1842.

The within is a true copy from the records of my office, Jan. 20, 1851.

FRAN'S W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

145 Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56. Registered in Book O, page 475.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 6120.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of two entries made in the entry taker's office of the Ococee district of No. 8040, 8041, dated the 25 day of July, 1842, by Francis W. Lea, as general enterer: there is granted by the said State of Tennessee, to said Francis W. Lea and his heirs, a certain tract or parcel of land, containing two hundred and forty-nine acres, lying in the county of Monroe, in the said district, situate in the 7th range east of the basis line fractional township two and eight section, being the northeast fractional and southeast quarter of said section—beginning at the no. east corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State of Tennessee to be affixed at Nashville, on the 6 day of September, in the year of our Lord one thousand eight hundred and forty-two, and of American Independence, the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25 day of October, 1842.

The within is a true copy from the records of my office, Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 57—registered in Book O, page 478.

146 Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5604.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of two entries made in the entry taker's office of the Ocoee district of No. 7569 & 8385, dated the 19th day of May, 1842, by Francis W. Lea as general enterer: there is granted by the State of Tennessee, to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing two hundred and sixty acres, lying in the county of Monroe, in the said district, situate in the 7 range east of the basis line fractional township two and ninth section, being the southwest quarter and the southeast fractional quarter of said section—beginning at the no. east corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State of Tennessee to be affixed at Nashville, on the 27 day of July, in the year of our Lord one thousand eight hundred and forty-two, and of American Independence, the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st October, 1842.

The within is a true copy from the records in my office, Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56, and registered in Book O, page 469.

147 Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5609.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of two entries made in the entry taker's office of the Ocoee district of No. 7569 & 8349, dated the 19th day of May, 1842, by Francis W. Lea, as general enterer: there is granted by the said State of Tennessee, to the said Francis W. Lea and his heirs a certain tract or parcel of land, containing two hundred and sixty acres, lying in the county of Monroe in the said district, situate in the 7 range east of the basis line fractional township two and sixteenth section, being the northwest quarter and the northeast fractional quarter of said section—beginning on the no. east corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea, and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State of Tennessee to be affixed at Nashville, on the 27 day of July, in the year of our Lord one thousand eight hundred and forty-two, and of American Independence, the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st October, 1842.

The within is a true copy from the records in my office, Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56—registered in Book O, page 472.

148 Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 6122.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of four entries in the entry taker's office of the Ocoee district of No. 8047, 8048, 8049, 8050, dated the 25 day of July, 1842, by Francis W. Lea, as general enterer: there is granted by the said State of Tennessee, to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing six hundred and forty acres, lying in the county of Monroe, in the said district, situate in the 7th range east of the basis line fractional township two and seventh section being the northwest, northeast, southwest and southeast quarter- of said section—beginning at the no. west corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State of Tennessee to be affixed at Nashville, on the 6 day of September, in the year of our Lord one thousand eight hundred and forty-two, and of American Independence, the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25 day of October, 1842.

The within is a true copy from the records of my office, Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 57—registered in Book O, page 477.

149 Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 6121.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of four entries made in the entry taker's office of the Ocoee district, of Nos. 8043, 8044, 8045 & 8046, dated the 25th day of July, 1842, by Francis W. Lea as general enterer: there is granted by said State of Tennessee, to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing six hundred and forty acres, lying in the county of Monroe, in the said district, situate in the 7th range east of the basis line fractional township two and eighteenth section, being the northeast, northwest, southeast and southwest quarters of said section—beginning at the northeast corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State of Tennessee to be affixed at Nashville, on the 6 day of September, in the year of our Lord one thousand eight hundred and forty-two, and of American Independence, the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25th day of October, 1842.

The within is a true copy from the records of my office, Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 57—registered in Book O, page 477.

150 Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 6149.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of three entries made in the entry taker's office of the Ocoee district, of Nos. 7995, 7996 & 7997, dated the 25th day of July, 1842, by Francis W. Lea, as general enterer: there is granted by the said State of Tennessee, to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing four hundred and eighty acres, lying in the county of Monroe in the said district, situate in the 7th range east of the basis line fractional township two and nineteenth section, being the southwest, southeast and northwest quarters of said section—beginning at the southwest corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 6 day of September, in the year of our Lord one thousand eight hundred and forty-two, and of American Independence, the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25th day of October, 1842.

The within is a true copy from the records of my office, Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 57, registered in Book O, page 476.

151 Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 6123.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of four entries made in the entry taker's office of the Ocoee district, of Nos. 8054, 8055, 8056, 8057, dated the 25 day of July, 1842, by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing six hundred and forty acres, lying in the county of Monroe, in the said district, situate in the 7th range east of the basis line fractional township two and twentieth section, being the northeast, northwest, southeast and southwest quarters of said section—beginning at the no. east corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State of Tennessee to be affixed at Nashville, on the 6 day of September, in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded the 25th day of October, 1842.

The within is a true copy from the records of my office, Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 57—registered in Book O, page 476.

152 Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5980.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district, of No. 8052, dated the 25 day of July, 1842, by Francis W. Lea, as general enterer: there is granted by the said State of Tennessee, to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing one hundred and twenty-five acres, lying in the county of Monroe, in the said district, situate in the 7 range east of the basis line fractional township two and twenty-first section, being the northwest fractional quarter of said section—beginning at the no. west corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 6 day of September, in the year of our Lord one thousand eight hundred and forty two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded October 1st, 1842.

The within is a true copy from the records in my office, Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56—registered in Book O, page 474.

153 Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5608.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district, of No. 7534, dated the 2nd day of May, 1842, by Francis W. Lea, as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing eighty-four acres, lying in the county of Monroe, in the said district, situate in the 7th range east of the basis line fractional township two and twenty-first section, being the southwest fractional quarter of said section—beginning at the so. west corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land, with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 27 day of July, in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st October, 1842.

The within is a true copy from the records in my office, Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56, registered in Book O, page 471.

154 Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5610.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district, of No. 7570, dated the 19th day of May, 1842, by Francis W. Lea, as general enterer: there is granted by the said State of Tennessee, to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing one hundred and 60 acres, lying in the county of Monroe, in the said district, situate in the 7 range east of the basis line fractional township two and twenty-eighth section, being the southwest quarter of said section—beginning at the so. west corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 27 day of July, in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 1st October, 1842.

The within is a true copy from the records in my office, Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56, registered in Book O, page 471.

155 Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5966.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district, of No. 7986, dated the 25 day of July, 1842, by Francis W. Lea, as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land, containing one hundred and six acres, lying in the county of Monroe, in the said district, situate in the 7th range east of the basis line fractional township two and twenty-eighth section, being the northwest fractional quarter of said section—beginning at the northwest corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State of Tennessee to be affixed at Nashville, on the 6 day of September, in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded the 1st of October, 1842.

The within is a true copy from the records of my office, Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56, registered in Book O, page 473.

156 Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 6151.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of four entries made in the entry taker's office of the Ocoee district, of Nos. 7987, 7988, 7989, 7990, dated the 25th day of July, 1842, by Francis W. Lea, as general enterer, there is granted by the said State of Tennessee to the said Francis W. Lea, and his heirs a certain tract or parcel of land, containing six hundred and thirty-nine acres, lying in the county of Monroe, in the said district, situate in the 7 range east of the basis line fractional township two and twenty-ninth section, being the southwest fractional and southeast, northeast and northwest quarter-of said section—beginning at the so. east corner of said quarter—with its appurtenances—to have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 6 day of September, in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25 October, 1842.

The within is a true copy from the records of my office, Cleveland, Tennessee, Jan. 24th, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 57, registered in Book O, page 479.

157 Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 6150.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of four entries made in the entry taker's office of the Ocoee district of Nos. 7991, 7992, 7793 & 7994, dated the 25th day of July, 1842, by Francis W. Lea, as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing six hundred and fourteen acres, lying in the county of Monroe, in the said district, situate in the 7 range east of the basis line fractional township two and thirtieth section, being the southwest and southeast fractional and northeast & northwest quarter- of said section—beginning at the so. east corner of said quarter, with its appurtenances—to have and to hold the said tract or parcel of land, with its appurtenances to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 6th day of September, in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded 25th October, 1842.

The within is a true copy from the records of my office January 24, 1851.

FRANCIS W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

158 Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56. Registered in Book O, page 475.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5969.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district of No. —, dated the 25th day of July, 1842, by Francis W. Lea as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs, a certain tract or parcel of land, containing ninety acres, lying in the county of Monroe, in the said district, situate in the 7th range east of the basis line fractional township two and thirty-second section, being the northeast fractional quarter of said section—beginning at the — corner of said quarter, with its appurtenances—to have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 6th day of September, in the year of our Lord one thousand eight hundred and forty, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register of the Ocoee District.

Recorded the 1st October, 1842.

The within is a true copy from the records in my office Cleveland, Tenn., Jan. 24, 1851.

FRAN'S W. LEA,
Register, &c., of the Ocoee District.

STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for
159 registration and noted in my office in Note Book A, page 56.
Registered in Book O, page 473.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

No. 5965.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district, of No. 7985, dated the 25th day of July, 1842, by Francis W. Lea, as general enterer: there is granted by the said State of Tennessee to the said Francis W. Lea and his heirs a certain tract or parcel of land, containing one hundred and twenty 5 acres, lying in the county of Monroe, in the said district, situate in the 7 range east of the basis line fractional township two and thirty-third section, being the northwest fractional quarter of said section—beginning at the northwest corner of said fractional quarter—with its appurtenances—to have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis W. Lea and his heirs forever.

In witness whereof, James C. Jones, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 6th day of September, in the year of our Lord one thousand eight hundred and forty-two, and of American Independence the sixty-seventh.

By the governor:

JAMES C. JONES.

JNO. S. YOUNG, *Secretary.*

Francis W. Lea hath title to the above described land.

J. C. TIPTON,
Register, &c., of the Ocoee District.

Recorded 1st October, 1842.

The within is a true copy from the records in my office Cleveland, Tenn., Jan. 24, 1851.

FRAN'S W. LEA,
Register, &c., of the Ocoee District.

160 STATE OF TENNESSEE, }
Monroe County. }

NOVEMBER 8TH, at 12 o'clock a. m., 1852.

Then was the within certified copy of grant received for registration and noted in my office in Note Book A, page 56. Registered in Book O, page 472.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

Filed Feb. 13, 1901.

J. T. CARTER, *Dep. Clerk.*

Exhibit "A." Deposition of W. D. Hale. Stevenson *et al. vs.* Fain *et al.* Norman B. Morrell, notary public.

F. W. Lea
to
M. W. Wetmore. } Deed.

This indenture, made this the 30th day of January, one thousand eight hundred and fifty-one, between Francis W. Lea, of Bradley county, on the one part, and Moses W. Wetmore, of the county of Davidson, of the other part, both citizens of the State of Tennessee.

Witnesseth: That the said Lea, for the consideration of two thousand dollars, to him paid, hath this day bargained and sold, and by these presents doth convey to said Wetmore and his heirs and assigns, certain tracts of land in Monroe county, Tenn., and in that part of said county which is included in the Ocoee district and which lands are described on the map of said district, on file in the entry taker's office of said district at Cleveland, Tenn., and described as follows:

All the lands in fractional township 2 and range 7 east of the basis line in the Ocoee district, and granted in the register's office of said district, by Nos. 5603, 5604, 5605, 5606, 5607, 5608, 5609, 5610, 5965, 5966, 5969, 5980, 5981, 5982, 5986, 6120, 6121, 6122, 6123, 6149, 6150, 6151, containing 7,114 acres. Section 33, granted by No. 6136, southeast and southwest quarters of section 34 by grant 6135, northeast and northwest fractional quarters of section 34 by grant 5602, southwest quarter of section 35 by grant 5975, and east half of the southeast quarter of section 32, by grant
161 5977, which lands are in fractional township 1 north and range 6 east, &c., containing 6433 acres.

Section 3, section 5 and southeast quarter and northeast fractional quarter of section 6, by grants Nos. 6131, 6132 and 6135, which lands are in fractional township 2 north and range 6 east of the basis line in the Ocoee district and containing 1,600 acres.

East half of the southwest, northwest, northeast and southeast quarters of section 7, by grant 5987, east half of the northwest and south half and northeast corner of the southwest quarter of section 18, by grant 6146, northeast and southeast quarters of section 18 by grant 6145, section 17 by grant 6147, section 30 by 6116, section 32 by grant 6114, section 29 by grant 6117, section 31 by grant 6115, which are in fractional township 1 south and range 6 east of the basis line in said district, containing 4,280 acres.

Section 6 by grant 6160, northwest and southwest and southeast quarters of section 7 by 6164, northeast, southeast and southwest quarters of section 18 by grant 6104, section 19 by grant 6103, section 30 by grant 5993, and section 31 by 5992, which lands are in fractional township 2 south and range 6 east of the basis line in said district, containing 3,520 acres.

Section 6 by grant 6152, northeast fractional and northwest quarter of section 7, by grant 6154. Northwest quarter and the southwest fractional quarter of section 6 by grant 6153, which are in

fractional township 3 south and range 6 east of the basis line in said district and containing 1142 acres.

Section 15 by grant 5932, section 22 by grant 5933, northeast quarter of section 21 by grant 5924, northwest quarter of section 26 by grant 5967, northwest quarter of section 35 by grant 5974, and northeast quarter of section 21 by grant 5924, which lands are in fractional township three north and range 5 east of the basis line in said district, 1760 acres.

Section 15 by grant 5985, section 16 by 5952, northeast and northwest quarters of section 22 by grant 5954, southeast and southwest quarters of section 29 by grant 5946, northeast quarter of section 21 by grant 5941, southwest quarter of section 21 by grant 5589, northeast, west half of the southeast and northwest quarters of section 10 grant 5939. Section 28 by grant- 5953 and 5584, southwest quarter of section 10 by grant 5947, east of the northeast quarter of section 29 by grant 5588, southeast quarter of section 8 by 5943, and southeast quarter of section 17 by grant 5473, which lands are in
162 fractional 1 north and range 4 east of the basis line in said district, containing 4400 acres; which, in the aggregate, contain twenty-five thousand two hundred and forty-nine acres. Having a full and perfect right to convey said lands, they being free from any incumbrance whatever, and will forever warrant and defend the title, as an indefeasible inheritance in fee simple, to said Wetmore, his heirs and assigns forever.

In testimony whereof I, Francis W. Lea, set my hand and seal the day and date before written.

FRANCIS W. LEA. [SEAL.]

STATE OF TENNESSEE, }
Davidson County. }

Personally appeared before me, F. R. Cheatham, clerk of the county court of said county, the above named Francis W. Lea, the bargainor, with whom I am personally acquainted, and who acknowledged that he executed the above deed for the purposes therein contained.

Witness my hand at office this 30th day of January, 1851.

F. R. CHEATHAM, *Clerk*,
By L. P. CHEATHAM, *D. C.*

STATE OF TENNESSEE, }
Monroe County. }

FEBRUARY 19TH, at 5 o'clock p. m., 1851.

Then was the foregoing deed and clerk's certificate received for registration and noted in my office in Note Book "A," page "46," and registered in Book "O," pages 257 & 258.

WILLIAM G. BOGLE,
Register of Monroe County, Tenn.

STATE OF TENNESSEE, }
Monroe County. }

I hereby certify that the within deed and certificate is a true, full and perfect copy as appears of record in my office.

Witness my hand and official seal, this the 5th day of January, 1901.

[SEAL.] THOMAS McCLELLAN, *Register.*

(10c. stamp.)

Endorsed: Exhibit "B" to deposition of W. D. Hale. Filed Feb. 13, 1901. J. T. Carter, deputy clerk.

EXHIBIT "C" TO DEP. OF W. D. HALE.

Know all men by these presents, that I, Moses W. Wetmore,
163 of the county of Davidson, State of Tennessee, in consideration of the sum of five thousand dollars to me paid by William S. Wetmore, of the town and county of Newport, State of Rhode Island (the receipt whereof is hereby acknowledged), do hereby give, grant, bargain, sell and convey unto the said William S. Wetmore, his heirs and assigns, one undivided moiety or half part of all those certain tracts of land in Monroe county, State of Tennessee, and in that part of said county which is included in the Ocoee district and which lands are described on the map of said district on file in the entry taker's office of said district at Cleveland, Tennessee, and described as follows, viz.: All the lands in fractional township two and range seven east of the basis line in the Ocoee district, and granted in the register's office of said district by Nos. 5603, 5604, 5605, 5606, 5607, 5608, 5609, 5610, 5965, 5966, 5969, 5980, 5981, 5982, 5986, 6120, 6121, 6122, 6123, 6149, 6150, 6151, containing 7,114 acres; section 33 granted by 6136, southeast and southwest quarters of section 34 by grant 6135 northeast and northwest fractional quarters of section 34 by grant 5602, southwest quarter of section 35 by grant 5975, and east half of the southeast quarter of section 32 by grant 5977, which lands are in fractional township one north and range six east, &c., containing 1433 acres—section 3, section 5, and southeast quarter and northeast fractional quarter of section 6, by grants Nos. 6131, 6132 and 6135, which lands are in fractional township two north and range six east of the basis line in the Ocoee district and containing 1600 acres—east half of the southwest, northwest, northeast and southeast quarters of section 7, by grant 5987, east half of the northwest and south half and northeast corner of the southwest quarter of section 18 by grant 6146—northeast and southeast quarters of section 18 by grant 6145, section 17 by grant 6147, section 30, by 6116—section 32 by grant 6114, section 29 by grant 6117, section 31

by grant 6115, which are in fractional township one south and range six east of the basis line in said district, containing 4280 acres. Section six by grant 6160, northwest, southwest and southeast quarters of section 7 by 6164, northeast, southeast and southwest quarters of section 18 by grant 6104, section 19 by grant 6103—section 30 by grant 5993, and section 31 by 5992, which lands are in fractional township 2 south and range 6 east of the basis line in said district containing 3520 acres—section 6 by grant 6152 northeast fractional and northwest quarter of section 7 by grant 6154 northwest quarter and southwest fractional quarter of section 6 by grant 6153, which are in fractional township 3 south and range 6
164 east of the basis line in said district, and containing 1142 acres. Section 15 by grant 5932—section 22 by grant 5933—northwest quarter of section 26 by grant 5967—northwest quarter of section 35 by grant 5974, and northeast quarter of section 21 by grant 5924, which lands are in fractional township 3 north and range 5 east of the basis line in said district, containing 1760 acres. Section 15 by grant 5985 (5588), section 16 by 5952, northeast and northwest quarters of section 22 by grant 5954—southeast and southwest quarters of section 29 by grant 5946—northeast quarter of section 21 by grant 5941—northeast, west half of the southeast and northwest quarters of section 10 by grant 5939—southwest quarter of section 21 by grant 5089 (5589), section 28 by grant 5953 and 5584—southwest quarter of section 10 by grant 5947—east of the northeast quarter of section 29 by grant 5588, southeast quarter of section 8 by 5943, and southeast quarter of section 17 by grant 5473, which lands are in fractional township 1 north and range 4 east of the basis line in said district, containing 4400 acres, which, in the aggregate, contain twenty-five thousand two hundred and forty-nine acres, being the same land conveyed to me by deed from Francis W. Lee, dated January 30th, 1851, and registered in the register's office of Monroe county, Tennessee, pages 257 and 258 of Book O.

Also one undivided moiety or half part of all and singular the following several tracts ar parcels of land situate in said Monroe county, in said district of Ocoee and State of Tennessee, granted and conveyed to this grantor by grants from said State of Tennessee, which said tracts are severally described as follows, viz.: By grant 7941 a tract containing 1885 acres, situate in the 5th range east of the basis line fractional township 1 south and 1st, 12th, 2d and 3d section-, being the fractional sections one and three northeast and northwest quarters of section two, and the southeast and southwest fractional quarters of second section, beginning at the northeast corner of said quarter. By grant 7932 a tract containing 618 acres situate in the 6th range east of the basis line, fractional township 1 north and 25, 36, 26 and 35 sections, being the northeast fractional of section 36, southeast and northwest fractional quarters of section 25, northeast and southwest fractional quarter- of section 26, and northwest quarter of 35th section, beginning at the northeast corner of said quarter. By grant 7933 a tract containing 640 acres,

situate in the 4th range east of the basis line fractional township 1 north and 1st and 12th section-, being the northeast and northwest quarters of 12th southwest of the 1st north halves of the
165 southeast and southwest quarters of the 12th section, beginning at the northeast corner of said quarter. By grant 7934 a tract containing 160 acres situate in the 4th range east of the basis line, fractional township 1 north and 17th section, being the northeast quarter of said section, beginning at the northeast corner of said quarter. By grant 7935 a tract containing 640 acres situate in the 6th range east of the basis line fractional township 2 north and 4th section, being the northeast, northwest, southeast and southwest quarters of said section, beginning at the no. east corner of said quarter. By grant 7936 a tract containing 160 acres, situate in the 6th range east of the basis line, fractional township two north and 6th section, being the southwest quarter of said section, beginning at the southwest corner of said quarter. By grant 7937 a tract containing 640 acres, situate in the 5th range east of the basis line, fractional township 1 south and 31 and 32 section-, being the northeast and southeast of 31 and northwest and southwest of 32 section-, beginning at the no. east corner of said quarter. By grant 7942 containing 1280 acres, situate in the 6th range east of the basis line, fractional township 2 south and 29 and 32 section-, being the northeast, northwest, southeast and southwest quarters of said section-, beginning at the northeast corner of said quarter.

Also one undivided moiety or half part of the following several tracts of land situate in the county of Polk in said Ocoee district, Tennessee, granted to this grantor by said State of Tennessee, as follows, viz.: By grant 7943, a tract containing 1280 acres, situate in the 5th range east of the basis line fractional township 2 south and 30 and 31 section-, being the northeast, northwest, southeast and southwest quarters of said sections, beginning at the no. east corner of said quarter. By grant 7928 a tract containing 1280 acres, situated in the 4th range east of the basis line, second township and 6, 7, 18 and 19 section-, being the northeast, northwest, southeast quarters of section 6, and northeast and southeast of sections 7 and 18 and the northeast quarter of section 19. By grant 7929, a tract containing 480 acres, situate in the fourth range east of the basis line, second township, and ninth section, being the northwest, southwest and southeast quarters of said section, beginning at the no. west corner of said quarter. By grant 7930, a tract containing 1280 acres, situate in the 3d range east of the basis line first township and 28th and 29th section-, being the northeast, northwest and southeast quarters of said sections, and the southwest quarter of 29th section, beginning at the no. east corner of said quarter. By
166 grant 7931, a tract containing 680 acres, situate in the 3d range east of the basis line, first township and 31st and 28th and 32d sections, being the southeast of 31st northwest and southwest half and northeast corner of the northeast of 32d and east half, southwest quarter of 28th section, beginning at the no. east corner of said quarter. By grant 6910, a tract containing 1280 acres, situ-

ate in the fourth range east of the basis line, first township and 13th and 24th section-, being the northeast, southeast, northwest and southwest — of said sections, beginning at the northeast corners of said quarters. By grant 6911, a tract containing 480 acres, situate in the fourth range east of the basis line first township and twenty-third section, being the northeast, southeast and southwest quarters of said section, beginning at the northeast corners of said quarters. By grant 6912, a tract containing 1280 acres situate in the fourth range east of the basis line first township and 25th and 26th section-, being the northeast, northwest, southeast and southwest quarters of said section-, beginning at the northeast corner- of said quarters. By grant 6913, a tract containing 1280 acres, situate in the fourth range east of the basis line first township and 35th and 36th section-, being the northeast, northwest, southeast and southwest quarters of said sections, beginning at the northeast corner- of said quarters. By grant 6914, a tract containing 160 acres, situate in the fourth range east of the basis line first township and thirty-fourth section, being the east halves of the northwest and southwest quarters of said section, beginning at the northwest corner of said first quarter. By grant 6915, a tract containing 160 acres, situate in the fourth range east of the basis line, first township and thirty-second section, being the northeast quarter of said section, beginning at the no. east corner of said quarter. By grant 6916, a tract containing 160 acres, situate in the fourth range east of the basis line, first township and nineteenth section, being the southeast quarter of said section, beginning at the southeast corner of said quarter. By grant 7917, a tract containing 1920 acres, situate in the fourth range east of the basis line second township and 1st, 2nd and 3rd sections, being the northeast, northwest, southeast and southwest quarters of said sections, beginning at the northeast corners of said quarters. By grant 7918, a tract containing 1920 acres, situate in the fourth range east of the basis line, second township and 10th, 11th and 12th sections, being the northeast, northwest, southeast and southwest quarters of said sections, beginning at the northeast corner- of said quarter.

By grant 7919, a tract containing 1920 acres, situate in
167 the fourth range east of the basis line, second township and 13th, 14th and 15th section-, being the northeast, northwest, southeast and southwest quarters of said sections, beginning at the nort-east corners of said quarters. By grant 7920, a tract containing 1920 acres, situate in the fourth range east of the basis line, second township and 23d, 24 and 25 sections, being the northeast and northwest, southeast and southwest quarters of said sections, beginning at the no. east corner- of said quarter-. By grant 7921, a tract containing 480 acres, situate in the fourth range east of the basis line, second township and twenty-seventh section, being the southeast, northeast and northwest quarters of said section, beginning at the no. east corners of said quarters. By grant 7922, a tract containing 160 acres, situate in the fourth range east of the basis line second township and 35th section, being the northeast quarter of said sec

tion, beginning at the the no. east corner of said quarter. By grant 7923, a tract containing 640 acres, situate in the fourth range east of the basis line, second township and 28th section, being the northeast, northwest, southeast and southwest quarters of said section, beginning at the no. east corner- of said quarter-. By grant 7924, a tract containing 640 acres, situate in the fourth range east of the basis line, second township and 21st section, being the northeast, northwest, southeast and southwest — of said section, beginning at the no. east corners of said quarters. By grant 7925, a tract containing 320 acres, situate in the fourth range east of the basis line, second township and 25th section, being the southeast and southwest quarters of said section, beginning at the northeast corner of said first quarter. By grant 7926, a tract containing 1920 acres, situate in the fourth range east of the basis line, second township and 5th, 8th and 17th sections, being the northeast, southeast, northwest and southwest quarters of said sections, beginning at the northeast corners of said quarters. By grant 7927, a tract containing 1280 acres, situate in the fourth range east of the basis line second township and 20th, 29th and 32d section-, being the northeast, northwest, southeast and southwest of the 20th, northwest, northeast and southeast of the 29th, and the northeast quarter- of the 32d of said section-, beginning at the northwest corners of said quarters, said tracts containing, in the aggregate, twenty-eight thousand nine hundred and forty-three acres.

Also one undivided moiety or half part of all the following tracts or parcels of land situate in said county of Monroe, State of Tennessee, viz.: The northeast, southeast, northwest and south-
168 west quarters of sections one and twelve in the third fractional township north in range five east of the basis line in the Ocoee district, being the land embraced in grant 6725 from the State of Tennessee, estimated to contain twelve hundred and eighty (1280) acres, more or less. Also the southeast, northeast, southwest and northwest quarters of sections eleven and two in the third fractional township north range five east of the basis line in the Ocoee district, being the land embraced in grant No. 6726 from the State of Tennessee, estimated to contain twelve hundred and eighty (1280) acres, more or less. Also the northeast, southeast, northwest and southwest quarters of sections thirteen and fourteen in third fractional township north in range five east of the basis line in the Ocoee district, being the land embraced in grant 6727 and estimated to contain twelve hundred and eighty acres, more or less.

Also the northeast, southeast, northwest and southwest quarters of sections twenty-four and twenty-five in the third fractional township north in range five, east of the basis line in the Ocoee district, being the land embraced in grant No. 6728, estimated to contain twelve hundred and eighty (1280) acres. Also the northeast, southeast, northwest and southwest quarters of section twenty-five and the northeast, southeast, and southwest quarters of section twenty-six in third fractional township north in range five east of the basis line in the Ocoee district, being the land embraced in grant

No. 6729 estimated to contain eleven hundred and twenty acres (1120) acres more or less. Also the northeast, southeast, northwest and southwest quarters of section twenty-seven and the southeast, northwest and southwest fractional quarters of section twenty-one in the third fractional township north range five east of the basis line in the Ocoee district, being the land embraced in grant No. 6730 and estimated to contain nine hundred and ninety-three acres, more or less.

Also the northeast, northwest, southeast, and southwest quarters of section thirty-six, and the northeast, southwest and southeast quarters of section thirty-five in the third fractional township north in range five east of the basis line in the Ocoee district being the land embraced in grant No. 6731 estimated to contain eleven hundred and twenty acres more or less. Also the northeast, northwest, southeast and southwest quarters of section thirty-four in the third fractional township north in range five east of the basis line in the Ocoee district being the land embraced in grant No. 6732 and containing six hundred and forty acres more or less. Also the
169 southeast and southwest quarters of section three, and northwest, northeast, southeast and southwest quarters of section ten in the third fractional township, north in range five east of the basis line in the Ocoee district, being the land embraced in grant No. 6733, and estimated to contain nine hundred and eighty acres more or less. Also the northeast and southeast fractional quarter of section four, and the northeast and southeast fractional quarters of section nine in the third fractional township north in range five east of the basis line in the Ocoee district, being the same land contained in grant No. 6734, and estimated to contain three hundred and ninety-nine acres more or less. Also the southwest fractional quarter of section twenty-eight northwest of the same southeast fractional quarter of section sixteen, southwest fractional quarter of section twenty-one, northeast of the same, northwest fractional quarter of section- 11 and 15, southeast fractional quarter of section ten, and northwest and southwest fractional quarter- of section thirty-two, in the first fractional township north range third east of the basis line in the Ocoee district, being the land embraced in grant No. 6735 and estimated to contain five hundred and fifty-two acres more or less.

To have and to hold the same moiety or undivided half part of all the tracts or parcels of land hereinbefore described to him the said William S. Wetmore, his heirs and assigns, in fee simple forever with all the privileges and appurtenances thereto belonging. And I, the said Moses W. Wetmore for myself and my heirs, executors and administrators do covenant with the said William S. Wetmore, his heirs and assigns that I am lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said William S. Wetmore as aforesaid, and that I will, and my heirs, executors and administrators shall warrant and defend the same to the said William

S. Wetmore, his heirs and assigns forever against the lawful claims and demands of all persons.

In witness whereof I have hereunto set my hand and seal this twenty-fifth day of August, A. D., one thousand eight hundred and fifty-two.

M. W. WETMORE. [SEAL.]

Signed, sealed and delivered in presence of—"28" and "32 section" and "east" erased—"west" interlined—"corners" erased before executing.

JO. W. BEEL,
Of Nashville, Tenn.
C. G. PERRY,
Of Newport, R. I.
C. I. BUSHNELL.

170 STATE OF RHODE ISLAND, } ss:
Town and County of Newport, }

Be it remembered that on the twenty-fifth day of August, A. D. one thousand eight hundred and fifty-two, before me the subscriber a public notary in and for the county and State aforesaid, duly commissioned and sworn personally appeared in the town of Newport in said county of Newport, Moses W. Wetmore known to me to be the individual described in and who executed the foregoing deed and he then and there acknowledged to me that the same was his free act and deed.

In witness whereof I have hereunto set my hand and seal of office the day and year last above written.

C. G. PERRY,
Notary Public.

[SEAL.]

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this ninth day of September, one thousand eight hundred and fifty-two before me the subscriber a commissioner in said State appointed by the governor of the State of Tennessee, to administer oaths and affirmations and to take depositions affidavits and the acknowledgment and proof of deeds, &c., to be used or recorded in the said State of Tennessee, and duly commissioned and sworn and dwelling in the city of New York, personally appeared Moses W. Wetmore, with whom I am personally acquainted, who acknowledged the foregoing deed for the uses and purposes therein mentioned.

In testimony whereof I, Charles I. Bushnell, commissioner as

aforesaid have hereunto set my hand and have affixed hereto my official seal as such commissioner the day and year aforesaid.

C. I. BUSHNELL,
[SEAL.] *Commissioner in the State of New York for the State of Tennessee.*

No. 65 Wall St., 3d story, New York city.

STATE OF TENNESSEE, }
Monroe County. }

October 21, at 6 o'clock p. m. 1852, then the foregoing deed and certificate received for registration and noted in my office Note Book A, page 54.

Registered in Book O, pages 428, 429, 430, 431, 432, 433 and 434. Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

171 Register's fee, eighty-six dollars, sixty-two and one-half cents.

STATE OF TENNESSEE, }
Monroe County. }

I, Thomas McClellan, register in and for county and State aforesaid, do hereby certify that the foregoing is a full, true and perfect copy of the deed executed by W. M. Wetmore, to William S. Wetmore, on August 5, 1852, and the certificate thereon, as the same appears of record in my office in Book "O," pages 428, 429, 430, 431, 432, 433 and 434.

Witness my hand and official seal, this October 26, 1899.

[SEAL.] THOMAS McCLELLAN, *Register.*

(10c. stamp.)

I further certify that the figures 6135 on line 6 from top page 2, the words section and quarters on line- 11 and 27 from top of page 3, and the words first, quarter and sections on lines 3, 12 and 16 from top page 5, all enterlined by me before executing above certificate.

This October 26, '99.

[SEAL.] THOMAS McCLELLAN, *Register.*

Endorsed: Exhibit "C" to deposition of W. D. Hale. Filed Feb. 13, 1901. J. T. Carter, deputy clerk.

Exhibit D to Deposition of W. D. Hale.

Know all men by these presents, that I, Moses W. Wetmore, of the county of Davidson, State of Tennessee, in consideration of the sum of two thousand dollars to me paid by William S. Wetmore, of the town and county of Newport, State of Rhode Island (the receipt whereof is hereby acknowledged), do hereby give, grant, bargain, sell and convey unto the said William S. Wetmore, his heirs and assigns one undivided moiety or half part of all those certain tracts of land in Monroe county, State of Tennessee, and in that part of said county which is included in the Ocoee district, and which lands are described on the map of said district on file in the entry taker's office of said district at Cleveland, Tennessee, and being the balance and remaining one-half part of all said lands in said county, the other one-half part of which was deeded by said Moses W. Wetmore to the said William S. Wetmore, by deed dated the
172 twenty-fifth day of August, eighteen hundred and fifty-two, and which deed was recorded in the register's office at Madisonville, on the twenty-first day of October, eighteen hundred and fifty-two, as will appear by reference to said records in Book O, pages 428, 429, 430, 431, 432, 433 and 434, and being and described as follows, viz.:

All the lands in fractional township 2, and range 7, east of the basis line in the Ocoee district, and granted in the register's office of said district by Nos. 5603, 5604, 5605, 5606, 5607, 5608, 5609, 5610, 5965, 5966, 5969, 5980, 5981, 5982, 5986, 6120, 6121, 6122, 6123, 6149, 6150, 6151, containing 7,114 acres sec. 33, granted by 6136, southeast and southwest quarters of section 34, by grant 6135, northeast and northwest fractional quarters of section 34, by grant 5602, southwest quarter of section 35, by grant 5975, and east half of the southeast quarter of section 32, by grant 5977, which lands are in fractional township 1 north, and range 6 east, &c., containing 1433 acres. Section 3, section 5, and southeast quarter and northeast fractional quarter of section 6, by grants Nos. 6131, 6132 and 6135, which lands are in fractional township two north, and range 6 east, of the basis line in the Ocoee district and containing 1600 acres. East half of the southwest, northwest, northeast, and southeast quarters of section 7, by grant 5987, east half of the northwest and south half and northeast corner of the southwest quarter of section 18, by grant 6146. Northeast and southeast quarters of section 18, by grant 6145. Section 17, by grant 6147. Sec. 30, by 6116. Section 32, by grant 6114. Section 29, by grant 6117. Section 31, by grant 6115, which are in fractional township 1 south, and range 6 east, of the basis line in said district. Containing 4280 acres. Section 6 by grant 6160. Northwest, southwest and southeast quarters of section 7, by 6164. Northeast, southeast and southwest quarters of section 18, by grant 6104. Section 19, by grant 6103. Section 30, by grant 5993, and section 31, by grant 5992, which lands are in fractional township 2 south, and range 6 east, of the basis line in said district, containing

3520 acres. Section 6, by grant 6152. Northeast fractional and northwest quarter of section 7, by grant 6154. Northwest quarter and the southwest fractional quarter of section 6, by grant 6153, which are in fractional township 3 south, and range 6 east, of the basis line in said district and containing 1142 acres. Section 15, by grant 5932, section 22, by grant 5933. Northwest quarter of section 26, by grant 5967. Northwest quarter of section 35, by grant 5974 and northeast quarter of section 21, by grant 5924, which lands are in fractional township 3 north, and range 5 east, 173 of the basis line in said district, containing 1760 acres. Section 15 by grant 5985, section 16 by 5952. Northeast and northwest quarters of section 22, by grant 5954. Southeast and southwest quarters of section 29, by grant 5946. Northeast quarter of section 21, by grant 5941. Northeast, west half of southeast, and northwest quarters of section 10, by grant 5939. Southwest quarter of section 21, by grant 5089. Section 28, by grant 5953 and 5584. Southwest quarter of sec. 10, by grant 5947. East of the northeast quarter of section 29, by grant 5588. Southeast quarter of section 8 by 5943, and southeast quarter of section 17, by grant 5473, which lands are in fractional township 1 north, and range 4 east, of the basis line in said district containing 4400 acres, which in the aggregate contain twenty-five thousand two hundred and forty-nine acres, being the same lands conveyed to me by deed from Francis W. Lea, dated January 30, 1858, and registered in the registry office of Monroe county, Tennessee, pages 257 and 258 of Book O.

Also one undivided moiety or half part of all and singular the following several tracts or parcels of land situated in said Monroe county in said district of Ocoee and State of Tennessee, granted and conveyed to this grantor by grants from said State of Tennessee, which said tracts are severally described as follows, viz.:

By grant 7941, a tract containing 1885 acres, situate in the 5th range east, of the basis line fractional township 1 south, and 1st, 12th, "2 & 3" section-, being the fractional sections one and three, northeast and northwest quarter- of section two, and the southeast and southwest fractional quarters of second sections. Beginning at the northeast corner of said quarter. By grant 7932, a tract containing 618 acres, situate in the 6th range east of the basis line fractional township 1 north, and 25th, 36th, 26th and 35th sections, being the northeast fractional of section 36, southeast and northwest fractional quarter- of section 25, northeast and southwest fractional quarter- of section 26, and northwest quarter of 35th section beginning at the northeast corner of said quarter. By grant 7933 a tract containing 640 acres, situate in the 4th range east of the basis line, fractional township 1 north, and 1st and 12th section-, being the northeast and northwest quarters of 12th, southwest of the 1st, north halves of the southeast and southwest quarters of the 12th sections, beginning at the northeast corner of said quarter. By grant 7934 a tract containing 160 acres situate in the fourth range east of the basis line fractional township 1 north, and 17th section, being the

northeast quarter of said section, beginning at the northeast
174 corner of said quarter. By grant 7935 a tract containing 640 acres situate in the 6th range east of the basis line, fractional township 2, north and 11th section being the northeast, northwest, southeast and southwest quarters of said section, beginning at the northeast corner of said quarter.

By grant 7936, a tract containing 160 acres, situate in the 6th range east of the basis line fractional township 2 north of 6th section, being the southwest quarter of said section beginning at the southwest corner of said quarter. By grant 7937 a tract containing 640 acres situate in the 5th range east of the basis line fractional township 1 south, and 31st and 32d section-, being the northeast and southeast of the 31st and northwest and southwest quarters of the 32 section. beginning at the northeast corner of said quarter-. By grant 7942 containing 1200 acres, situate in the 6th range east of the basis line fractional township 2, south and 29 and 32 section-being the northeast, northwest, southeast and southwest quarters of said section-, beginning at the northeast corner of said quarter.

Also one undivided moiety or half part of all the following tracts or parcels of land situate in said county of Monroe, State of Tennessee, viz.: the northeast, southeast, northwest and southwest quarters of sections one and twelve in the third fractional township north in range five east of the basis line in the Ocoee district, being the land embraced in grant 6725 from the State of Tennessee estimated to contain twelve hundred and eighty (1280) acres more or less. Also the southeast, northeast, southwest and northwest quarters of sections eleven and two in the third fractional township north range five east of basis line in the Ocoee district, being the land embraced in grant No. 6726 from the State of Tennessee estimated to contain twelve hundred and eighty acres (1280) more or less. Also the northeast and southeast, northwest and southwest quarters of sections thirteen and fourteen, in third fractional township north in range five east of the basis line in the Ocoee district, being the land embraced in grant 6727, and estimated to contain twelve hundred and eighty acres more or less (1280). Also the northeast, southeast, northwest and southwest quarters of sections twenty-four and twenty-five in the third fractional township north in range five east of the basis line in the Ocoee district being the land embraced in grant No. 6728, estimated to contain twelve hundred and eighty acres (1280). Also the northeast, northwest, southeast and southwest quarters of
section twenty-five and the northeast, southeast and southwest
175 quarters of section twenty-six in third fractional township north in range five east of the basis line in the Ocoee district, being the land embraced in grant 6729, estimated to contain eleven hundred and twenty (1120) acres more or less. Also the northeast, southeast, northwest and southwest quarters of section twenty-seven, and the southeast, northwest and southwest fractional quarters of section twenty-one, in the third fractional township, north range five east of the basis line in the Ocoee district, being the land embraced in the grant No. 6730, and estimated to contain

nine hundred and ninety-three acres (993) more or less. Also the northeast, northwest, southeast and southwest quarters of section thirty-six, and the northeast, southwest and southeast quarters of section thirty-five in the third fractional township north in range five east of the basis line in the Ocoee district, being the lands embraced in grant No. 6731, estimated to contain eleven hundred and twenty acres (1120) more or less. Also the northeast, northwest, southeast and southwest quarters of section thirty-four in the third fractional township north in range five east of the basis line in the Ocoee district, being the land embraced in grant No. 6732 and containing six hundred and forty acres (640) more or less. Also the southeast and southwest quarters of section three and northwest, northeast, southeast and southwest quarters of section ten in the third fractional township north in range five east of the basis line in the Ocoee district, being the land embraced in grant No. 6733, and estimated to contain nine hundred and eighty acres more or less (980). Also the northeast and southeast fractional quarters of section nine in the third fractional township north in range five east of the basis line in the Ocoee district being the same land contained in grant No. 6734, and estimated to contain three hundred and ninety-nine acres (399) more or less. Also the southwest fractional quarters of section twenty-eight northwest of the same, southeast fractional quarter of section sixteen, southwest fractional quarter of section twenty-one, northeast of the same, northwest fractional quarter of section- eleven and fifteen, southeast fractional quarter of section ten, and northwest and southwest fractional quarter- of section thirty-two in the first fractional township north range third east of the basis line in the Ocoee district being the land embraced in grant No. 6735, and estimated to contain five hundred and fifty-two acres (552) more or less, and containing in the aggregate forty-two thousand one hundred and ninety-six acres be the same more or less.

176 To have and to hold the same remaining moiety or half part of all the tracts or parcels of land hereinbefore described to him the said William S. Wetmore his heirs and assigns in fee simple forever, with all the privileges and appurtenances thereto belonging. And, I the said Moses W. Wetmore for myself and my heirs, executors and administrators do covenant with the said William S. Wetmore, his heirs and assigns that I am lawfully seized in fee of the aforegranted premises, that they are free from all incumbrances, that I have good right to sell and convey the same to the said William S. Wetmore, as aforesaid and that I will and my heirs, executors and administrators shall warrant and defend the same to the said William S. Wetmore, his heirs and assigns forever against the lawful claims and demands of all persons whomsoever.

In witness whereof I have hereunto set my hand and seal this fourteenth day of February, eighteen hundred and fifty-three.

MOSES W. WETMORE. [SEAL.]

Signed, sealed and delivered in the presence of.

ROBERT PROTHEROE.

D. I. BUSHNELL.

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this seventeenth day of February, one thousand eight hundred and fifty-three, before me, the subscriber, a commissioner in said State, appointed by the governor of the State of Tennessee, to administer oaths and affirmations, and to take depositions, affidavits and the acknowledgment and proof of deeds, &c., to be used or recorded in the said State of Tennessee, and duly commissioned and sworn, and dwelling in the city of New York, personally appeared the within named Moses W. Wetmore, with whom I am personally acquainted, who acknowledged the within deed for the uses and purposes therein contained.

In testimony whereof I, Charles I. Bushnell, commissioner as aforesaid, have hereunto set my hand and affixed my official seal the day and year aforesaid.

C. I. BUSHNELL,

[SEAL.] *Commissioner, &c., in the State of New York, Appointed by the Governor of the State of Tennessee.*

No. 63 Wall street, 3d story, N. Y. city.

177 STATE OF TENNESSEE, }
Monroe County. }

MARCH 7TH, at 11 o'clock a. m., 1853.

That was the within deed and commissioner's certificate received for registration and noted in my office in Note Book A, page 59, registered in Book O, pages 534, 535, 536, 537 and 538.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

Register's fee $49.75, forty-nine dollars and seventy-five cents.

STATE OF TENNESSEE, }
Monroe County. }

I, Thomas McClellan, register in and for said county, do hereby certify that the foregoing is a full, true and perfect copy of the deed executed by Moses W. Wetmore to William S. Wetmore, on Feb. 14, 1853, as the same appears of record in my office.

Witness my hand and official seal, this Nov. 27 1900.

[SEAL.] THOS. McCLELLAN, *Register.*

Endorsed: Exhibit "D" to deposition of W. D. Hale. Filed Feb. 13, 1901. J. T. Carter, deputy clerk.

Exhibit "D," deposition of W. D. Hale, Stevenson, *et al. vs.* Fain, *et al.* Norman B. Morrell, notary public.

EXHIBIT "E" TO DEPOSITION OF W. D. HALE.

THE STATE OF TENNESSEE:

Recorded, Nashville.

No. 7660. JULY 30TH, 1869.

To all to whom these presents shall come, Greeting :

Know ye, that in consideration of 19 entries made in the register's and entry taker's office of the Ocoee district of Nos. from 9106 to 9123 inclusive, dated July 8th, 1869, by John Blackburn as general enterer, according to the act of 1854, passed February 25, chpt. 22d, there *is* granted by the said State of Tennessee unto the said John Blackburn and his heirs, certain tracts or parcels of land containing 253 acres more or less, by survey original of the Ocoee district and lying in said district, viz :

178 5 acres being the southeast fractional quarter of fr. section 5, fr. township 2 range 7 east of the basis line, Ocoee district, beginning at the southwest corner of said quarter; also

8 acres, the northwest fractional quarter of fr. section 9, fr. township 2 range 7 east, beginning at the southwest and southeast corners of said quarter; also

7 acres, the northeast fractional quarter of section 9; also

5 acres, the southeast fractional quarter of fr. section 16; also

15 acres, the southeast fractional quarter of fr. section 28; also

7 acres, the southwest fr. quarter of fr. section 32; also

3 acres, the northeast fr. quarter of fr. section 31; also

6 acres, the northwest fr. quarter of fr. section 31, all in fr. township 2, range 7 east of the basis line, Ocoee district; also

3 acres, the southeast fractional quarter of fr. section 36, fr. township one north range 6 east of the basis line, Ocoee district; also

47 acres being the northwest fr. quarter of fr. section 6; also

40 acres, the northwest corner of the southwest quarter of fr. section 6; also

51 acres, the southwest fractional quarter of fr. section 36; also

6 acres, the southeast fr. quarter of fr. section 36; also

4 acres, the northeast fractional quarter of fr. section 35; also

15 acres, the northeast fr. quarter of fr. section 23; all in fr. township 2 north, range 6 east of the basis line, Ocoee district; also

10 acres, the northeast fr. quarter of fr. section 35, fr. township 2 south range 6 east of the basis line; also

6 acres, the northeast fr. quarter of fr. section 8, township 3 south, range 6 east of the basis line Ocoee district; also

10 acres, the southwest fr. quarter of fr. section 31, fr. township 5 south, range 6 east of the basis line, Ocoee district, beginning at the southwest corner of said fr. quarter.

With the hereditaments and appurtenances.

To have and to hold the said tract or parcel of land with its appurtenances to the said John Blackburn and his heirs forever.

In witness whereof, D. W. C. Senter, governor of the State of Tennessee, hath hereunto set his hand and caused the great
179 seal of the State to be affixed at Nashville on the 25th day of July in the year of our Lord, 1869, and of the Independence of the United States the ninety-fourth.

By the governor:

[SEAL.] D. W. C. SENTER.

A. J. FLETCHER, *Secretary.*

John Blackburn, has title to the above described land. Recorded July 28th, 1869.

JOHN BLACKBURN,
Register, &c., of Ocoee District.

I, T. J. Knox, register of the Ocoee district, hereby certify that the foregoing is a full, true and perfect copy of grant number 7660 from the State of Tennessee to John Blackburn as appears of record in my office in Book "P" at page 16.

Witness my hand this 3d day of April, A. D. 1897.

T. J. KNOX,
Entry Taker and Register of the Ocoee District.

Endorsed: Filed Feb. 13, 1901. J. T. Carter, deputy clerk.

Grant 7660. Blackburn. Exhibit "E." Deposition of W. D. Hale. Stevenson, *et al. vs.* Fain, *et al.* Norman B. Morrel, notary public.

EXHIBIT F TO DEPOSITION OF W. D. HALE.

Know all men by these presents:

That in consideration of one hundred and fifty dollars, to us in hand paid, and in settlement of conflicting titles, and for other considerations, receipt whereof is hereby acknowledged we, John S. Blackburn, of Alabama; J. O. Blackburn and wife, E. C. Blackburn, J. Robert Blackburn, Mrs. J. L. Still and husband, J. L. Still, L. L. Hargis, L. E. Ramsey and her husband R. R. Ramsey, of Bradley county, Tennessee, do hereby release and convey unto George Peabody Wetmore, of Newport, Rhode Island, the following described land, to wit: All the lands in Polk and Monroe counties, Tennessee, entered by or granted to or conveyed to John Blackburn, formerly of Bradley county, Tennessee, which lie in the counties of Polk and Monroe in the State of Tennessee, in the third
180 range east, and the ranges east of the third range east of the Ocoee district. This instrument is intended to be a release and conveyance of all the estates which descended to us by inheritance from said John Blackburn in said ranges.

As to the larger part of the title paper of said John Blackburn this is a release of younger grants issued to him on the older grants of said Wetmore, and as to sundry fractions, especially those described in grants 7660 and 7661, this is a conveyance, but without warranty on our part. Reference is here made to the said Ocoee district, and county records for further description of the premises hereby conveyed.

Witness our hands and seals this 21st day of March, A. D. 1894.

J. S. BLACKBURN. [SEAL.]
J. O. BLACKBURN. [SEAL.]
J. R. J. BLACKBURN. [SEAL.]
M. T. STILL. [SEAL.]
J. L. STILL. [SEAL.]
L. L. HARGIS. [SEAL.]
G. W. HARGIS. [SEAL.]
L. E. RAMSEY. [SEAL.]
R. R. RAMSEY. [SEAL.]

STATE OF MISSISSIPPI, } ss:
County of Jones, }

Personally appeared before me, chancery clerk in and for said county, the within named bargainor, John S. Blackburn, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand and official seal at office in Ellisville, Mississippi, this 21st day of March, A. D. 1894.

[SEAL.]

E. B. SHARP,
Chancery Clerk, Jones County, Miss.

STATE OF MISSISSIPPI, } ss:
County of Jones, }

I, W. T. Huston, judge of the chancery court of said Jones county, do hereby certify that said court is a court of record, having a seal, and that said E. B. Sharp, whose genuine signature appears to the foregoing certificate of acknowledgment of deed of Blackburn, *et al.*, to G. P. Wetmore, is the clerk of said court, and that his acts as such are entitled to full credit, and I do further certify that he is the custodian of the seal of said court affixed to said certificate.

181 Given in said Jones county, this 26th day of April, 1894.
Witness my hand.

W. T. HUSTON,
Judge of the Chancery Ct.

STATE OF TENNESSEE, } ss:
Bradley County, }

Personally appeared before me Bascom (*sic*) Rodgers, clerk of the county court of said county and State, J. O. Blackburn, J. R. Blackburn, J. L. Still and R. R. Ramsey, the within named bargainors

with whom I am personally acquainted, and who acknowledged that they executed the within named instrument for the purposes therein contained.

Witness my hand at office in Cleveland, Tennessee, this 28th day of March, 1894.

BACON (*sic*) RODGERS,
County Court Clerk.

[SEAL.]

STATE OF TENNESSEE, *Bradley County,* } *ss:*

To W. D. Jones, Esq.:

You are hereby authorized and empowered to take the examination of Mrs. Emma Blackburn, M. L. Still, S. E. Ramsey and L. L. Hargis, privately and apart from their husbands, relative to the free execution of the annexed deed, and the same so taken to certify under your hand and seal.

Given under my hand at office, March 27th, 1894.

BASCOM ROGERS,
Clerk of County Court of said County.

[SEAL.]

STATE OF TENNESSEE, *Bradley County,* } *ss:*

E. C. Blackburn, wife of J. O. Blackburn, M. L. Still, wife of J. L. Still, L. L. Hargis, wife of G. W. Hargis, L. E. Ramsey, wife of R. R. Ramsey, having personally appeared before me, and having by virtue of the authority in me vested, been examined privately and apart from their said husbands, and they having acknowledged the due execution of the annexed deed by them freely, voluntarily and understandingly, without compulsion or constraint by their said husbands, and for the purposes therein contained, the same is therefore certified.

Witness my hand and seal this March 28th, 1894.

[SEAL.] W. D. JONES, *J. P.*

182 STATE OF TENNESSEE, *Polk County,* } *ss:*

MAY 4TH, 1894, at 2.20 o'clock p. m.

Then was the foregoing instrument and certificates noted in Note Book "A" page 202, and registered in the register's office in Benton, in Book "R," pages 361 to 363.

L. W. HILDERBRAND, *Register.*

STATE OF TENNESSEE, *Monroe County,* } *ss:*

Received for record and noted in Note Book "B," page 176 at 7:30 a. m., March 6, 1897, and registered in Book No. 3, pages 495 and 6-7.

THOMAS McCLELLAN, *Register.*

STATE OF TENNESSEE, *Polk County,* } ss:

JUNE 11, 1900, at 12:00 o'clock a. m.

Then was the foregoing instrument and certificates noted in Note Book No. 1, page 42 and recorded in Registration Record No. 1, pages 286–7–8.

E. L. AMBURN, *Register,*
By A. E. LOVE,
Deputy Register.

STATE OF TENNESSEE, *Polk County,* } ss:

I, E. L. Amburn, register of deeds in and for said county aforesaid, do certify that the foregoing is a true and perfect copy of the deed of conveyance made by the heirs of John Blackburn to George P. Wetmore, as the same appears of record in my office.

Witness my hand at office in Benton, Tennessee, on this 11th day of June, A. D. 1900.

E. L. AMBURN, *Register,*
[SEAL.] By A. E. LOVE,
Deputy Register.

(10c. stamp.)
Fee paid, $2.70.

STATE OF TENNESSEE, *Monroe County,* } ss:

I, Thomas McClellan, register of Monroe county, Tennessee, do hereby certify that the foregoing, except as to certificates from the register of Polk county, Tennessee, is a true and perfect copy
183 of the deed executed by J. S. Blackburn, *et al.*, to George P. Wetmore, as the same appears of record in my office.

Witness my hand and seal at office, this March 16, 1901.

[SEAL.] THOMAS McCLELLAN, *Register.*

(10c. stamp.)

Indorsed: Exhibit "F" to deposition of W. B. Hale. Filed Feb. 13, 1901. J. T. Carter, deputy clerk.

Copy.

EX. G TO DEPOSITION OF W. D. HALE.

No. 7775.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district, of number 8058 (re-entered by

entry number 9514), dated the 25 day of July, 1842, by Francis W. Lea as general enterer: this grant issued under act of 1870–1, chapter XLV, in lieu of formerly issued grant, on proof of compliance with terms of said act submitted to the entry taker and register of said district. There is granted by the State of Tennessee, to George Peabody Wetmore, three-fourths undivided interest and to Anna L. Stevenson, widow, V. K. Stevenson, Jr., Matilda C. Alloway, Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, children of V. K. Stevenson, one-fourth undivided interest to take as if this grant had been issued to V. K. Stevenson in his life-time, and their heirs, a certain tract or parcel of land, containing one hundred and sixty acres, lying in the county of Monroe in the said district, situate in the seventh range, east of the basis line second frac'l township and nineteenth section, being the northeast quarter of said section — beginning at the northeast corner of said quarter — with its appurtenances. To have and to hold the said tract of land, with its appurtenances, to the said George Peabody Wetmore, three-fourths undivided interest, and to Anna L. Stevenson, widow, V. K. Stevenson, Jr., Matilda C. Alloway, Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, children of V. K. Stevenson, one-fourth undivided interest to take as if this grant had been issued to V. K. Stevenson in his life-time, and their heirs forever.

184 In witness whereof, Robert L. Taylor, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 28th day of May in the year of our Lord, one thousand, eight hundred and eighty-seven.

By the governor:

ROB'T L. TAYLOR.

JOHN ALLISON, *Secretary.*

Recorded in office of register Ocoee district, Tennessee, in Book P, page 150 on this the 8th day of June, A. D. 1887.

A. T. WHITE,

[SEAL.] *Register of the Ocoee District.*

G. P. Wetmore and the heirs of V. K. Stevenson have title to the within land.

A. T. WHITE,
Register of the Ocoee District.

No. 7775. Exhibit "G." Deposition of W. D. Hale. Stevenson *et al. vs.* Fain *et al.* Norman B. Morrell, notary public.

Copy.

Ex H to Dep. of W. D. Hale.

No. 7776.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district, of number 8051 (re-entered by entry number 9515), dated the 25th day of July, 1842, by Francis W. Lea as general enterer: this grant issued under act of 1870–1, chapter XLV, in lieu of formerly issued grant, on proof of compliance with terms of said act submitted to the entry taker and register of said district. There is granted by the State of Tennessee, to George Peabody Wetmore, three-fourths undivided interest and to Anna L. Stevenson, widow, V. K. Stevenson, Jr., Matilda C. Alloway, Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, children of V. K. Stevenson, one-fourth undivided interest to take as if this grant had been issued to V. K. Stevenson in his life-time, and their heirs, a certain tract or parcel of land, containing one hundred
185 and forty-seven acres, lying in the county of Monroe in the said district, situate in the seventh range, east of the basis line second frac'l township and sixteenth section, being the southwest fractional quarter of said section beginning at the southwest corner of said quarter with its appurtenances to have and to hold the said tract of land, with its appurtenances, to the said George Peabody Wetmore, three-fourths undivided interest, and to Anna L. Stevenson, widow, V. K. Stevenson, Jr., Matilda C. Alloway, Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, children of V. K. Stevenson, one-fourth undivided interest to take as if this grant had been issued to V. K. Stevenson in his life-time, and their heirs forever.

In witness whereof, Robert L. Taylor, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 28th day of May in the year of our Lord, one thousand, eight hundred and eighty-seven.

By the governor:

ROB'T L. TAYLOR.

JOHN ALLISON, *Secretary.*

Recorded in office of register Ocoee district, Tennessee, in Book P, page 151, on this the 8th day of June, A. D. 1887.

A. T. WHITE,

[SEAL.] *Register of the Ocoee District.*

G. P. Wetmore and the heirs of V. K. Stevenson have title to the within land.

A. T. WHITE,
Register of the Ocoee District.

No. 7776. Exhibit "H." Deposition of W. D. Hale. Stevenson *et al. vs.* Fain *et al.* Norman B. Morrell, notary public.

EX. "J" TO DEPOSITION OF W. D. HALE.

No. 8966.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district, of number — (re-entered 186 by number 9609), dated the 28th day of April, 1892, by Francis W. Lea as general enterer: this grant issued under act of 1870–1, chapter XLV, in lieu of formerly issued grant, on proof of compliance with terms of said act submitted to the entry taker and register of said district. There is granted by the State of Tennessee, to George Peabody Wetmore, three-fourths undivided interest, and to Matilda C. Alloway, Hugh Stevenson, Eloise Stevenson, Paul E. Stevenson and Maxwell Stevenson, children of V. K. Stevenson, one-fourth undivided interest, to take one-fourth interest as if this grant had been issued to V. K. Stevenson in his life-time, and their heirs, a certain tract or parcel of land, containing 160 acres, lying in the county of Monroe in the said district, situate in the 7th range, east of the basis line fractional township two and 7th section, being the southeast quarter of said section 7, beginning at the northeast corner of said quarter — with its appurtenances — to have and to hold the said tract of land, with its appurtenances, to the said George Peabody Wetmore, three-fourths undivided interest, and to Matilda C. Alloway, Hugh Stevenson, Eloise Stevenson, Paul E. Stevenson and Maxwell Stevenson, children of V. K. Stevenson, one-fourth undivided interest, to take as if this grant had been issued to V. K. Stevenson in his life-time, and their heirs forever.

In witness whereof, John P. Buchanan, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 2nd day of May, in the year of our Lord one thousand, eight hundred and ninety-two.

By the governor:

JOHN P. BUCHANAN.

C. A. MILLER, *Secretary.*

Recorded in office of register Ocoee district, Tennessee, in Book P, page 240, on this the 7th day of May, A. D. 1892.

A. T. WHITE,
Register of the Ocoee District.

[SEAL.]

George Peabody Wetmore and the heirs of V. K. Stevenson have title to above described land.

A. T. WHITE,
Register of the Ocoee District.

187 No. 8966. Exhibit "J." Deposition of W. D. Hale. Stevenson *et al. vs.* Fain *et al.* Norman B. Morrell, notary public.

Copy.

EX. "K" TO DEP. OF W. D. HALE.

No. 7785.

The State of Tennessee to all to whom these presents shall come, Greeting:

Know ye, that in consideration of an entry made in the entry taker's office of the Ocoee district, of number — (re-entered by entry number 9533), dated the — day of ——, 18—, by —— —— as general enterer: this grant issued under act of 1870–1, chapter XLV, in lieu of formerly issued grant, on proof of compliance with terms of said act submitted to the entry taker and register of said district. There is granted by the State of Tennessee, to George Peabody Wetmore, three-fourths undivided interest and to Anna L. Stevenson, widow, V. K. Stevenson, Jr., Matilda C. Alloway, Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, children of V. K. Stevenson, one-fourth undivided interest to take as if this grant had been issued to V. K. Stevenson in his life-time, and their heirs, a certain tract or parcel of land, containing seven acres, lying in the county of Monroe in the said district, situate in the seventh range, east of the basis line fractional township two and thirty-third section, being the southwest fr. of said section — beginning at the southwest corner of said quarter — with its appurtenances — to have and to hold the said tract of land, with its appurtenances, to the said George Peabody Wetmore, three-fourths undivided interest, and to Anna L. Stevenson, widow, V. K. Stevenson, Jr., Matilda C. Alloway, Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, children of V. K. Stevenson, one-fourth undivided interest, and their heirs forever.

In witness whereof, Robert L. Taylor, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed at Nashville, on the 28th day of May in the year of our Lord, one thousand, eight hundred and eighty-seven.

By the governor:

ROB'T L. TAYLOR, *Governor.*

JOHN ALLISON, *Secretary.*

188 Recorded in office of register Ocoee district, Tennessee, in Book P, page 160, on this the 8th day of June, A. D. 1887.

A. T. WHITE,
[SEAL.] *Register of the Ocoee District.*

G. P. Wetmore and the heirs of V. K. Stevenson have title to the within land.

A. T. WHITE,
Register of the Ocoee District.

No. 7785. Exhibit "K." Deposition of W. D. Hale. Stevenson *et al. vs.* Fain *et al.* Norman B. Morrell, notary public.

EX. "L" TO DEP. OF W. D. HALE.

For the consideration of one dollar I, John M. Lea, of Davidson county, Tennessee, do hereby sell and convey unto Edward Henegar, of Knox county, Tennessee, all my right, title and claim of, in and to a certain undivided interest coming to him as one of the heirs of his two deceased brothers, the late Francis W. Lea and the late William P. Lea, said lands being situate in the Hiwassee district, and also all that portion of the Ocoee district which lies outside of the county of Hamilton, and, also, in Blount county, State of Tennessee. The lands hereby conveyed are in many parcels and minute description of metes and bounds can not be given, but the lands intended to be conveyed as aforesaid lie in the counties of Bradley, Polk, Monroe and Blount counties, and, perhaps, in other portions of the Hiwassee and Ocoee district, with the reservation as aforesaid, that no conveyance is made of any interest he possesses as heir of my brothers or in any individual right in any lands lying in the county of Hamilton. No title is warranted.

Witness my hand October 15th, 1891.

JOHN M. LEA.

STATE OF TENNESSEE, }
Davidson County. }

Personally appeared before me E. K. Glenn, d'p'y clerk of the county court of said county, the within named Jno. M. Lea, the bargainor, with whom I am personally acquainted, and who acknowledged that he executed the annexed instrument for the purposes therein contained.

Witness my hand at office, this 14 day of Oct., 1891.

E. K. GLENN,
D'p'y Clerk.

189 STATE OF TENNESSEE, }
Monroe County. }

I, Thos. McClellan, register for said county, hereby certify that the within deed and certificate thereunto attached was filed in my office Oct. 25/99, and noted in Note Book C, p. 31. Recorded in Book No. 5, page 254. This October 26, 1899.

THOS. McCLELLAN, *Register.*

Transfer tax paid.

STATE OF TENNESSEE, }
Monroe County. }

I, Thos. McClellen, register, in and for said county, do hereby certify that the foregoing is a full, true and perfect copy of the deed executed by John M. Lea to Edward Henmyer, on October 15/99, as the same appears of record in my office.

Witness my hand and official seal, this Oct. 26th, 1899.

[SEAL.] THOS. McCLELLEN, *Register.*

Ten cent U. S. documentary stamp.

Endorsed: Filed Feb'y 13, 1901. J. T. Carter, deputy clerk.

EX. "M" TO DEP. OF W. D. HALE.

Know all men by these presents, that

Whereas, the late Francis W. Lea died owning lands situate in the counties of Monroe, Polk, Bradley, James, Hamilton and Marion counties, in the State of Tennessee, and,

Whereas, the late William P. Lea died owning lands situate in the counties aforesaid, and,

Whereas, to all said lands those owned by the said Francis W. Lea as well as those owned by the said William P. Lea the undersigned have claims as heirs of the said deceased parties, that is to say, the undersigned Susan J. Callaway, Lavinia Earnest and Margaret L. Henegar inherited as sisters of the said deceased, and the other undersigned inherit as the heirs of their deceased mother, the late Mrs. Ann Elizabeth Barnard, who was a sister both of said Francis W. Lea and said William P. Lea, also the other un-
190 dersigned Emily Lee Clarke, who is interested as the heir of her deceased father, the late Jas. A. Lee, who was a brother both of said Francis W. and Wm. P. Lea;

Now, for the consideration of one dollar, the undersigned hereby convey, sell and transfer unto Edward Henegar, of the county of Knox, State aforesaid, all their right, title and claim of, in and to the aforesaid lands, situate in the counties aforesaid, in-

herited as aforesaid by them as heirs of the said Francis W. Lea and William P. Lea, the books of the registers' offices in the several offices and also the public records in the office of the entry taker and register of the Hiwassee and Ocoee districts being referred to for description of the various tracts of land conveyed by this instrument, it being the intent to clothe the said Henegar with the legal title to all the lands situate in the counties aforesaid to which the undersigned have title as the heirs of said Francis W. and William P. Lea.

Witness our hands July 15th, 1891.

H. B. HENEGAR.
M. L. HENEGAR.
LAVENIA EARNEST.
MRS. S. J. CALLAWAY.
R. A. CLARKE.
EMILY LEA CLARKE.
JAMES BARNARD.
LAVINIA L. BARNARD.
ARABELLA BARNARD.
LOUISA H. GERE.
LUKE LEA BARNARD,
By JAMES BARNARD,
His Att'y in Fact.
W. D. W. BARNARD.
A. H. HASTINGS.
SUSAN W. HASTINGS.
EATON BARNARD.

STATE OF TENNESSEE, }
Bradley County. }

Personally appeared before me the undersigned authority, H. B. Henegar and wife, Margaret L. Henegar, two of the bargainors in the foregoing deed and contract, with whom I am personally acquainted, and acknowledge that they executed the same for the purpose therein expressed, and Margaret L. Henegar, wife of the said H. B. Henegar, having appeared before me privately and apart from her said husband, acknowledged that she executed the fore-
191 going deed and contract, freely, voluntarily and understandingly, without compulsion or constraint from her husband and for the purposes therein expressed. The same is therefore certified.

Witness my hand and official seal, this the 8th day of August, 1891.

[SEAL.]

A. A. PIERCE,
Notary Public.

STATE OF TENNESSEE, }
County of Knox. }

Personally appeared before me Alex McMillan, notary public in and for said county, the within named bargainor, Lavenia Earnest (a widow lady), with whom I am personally acquainted, and who acknowledged that she executed the within instrument for the purposes therein contained.

Witness my hand and official seal at office, in Knoxville, Tenn., on this the 12 day of August, A. D. eighteen hundred and 91.

ALEX McMILLAN,
[SEAL.] *Notary Public.*

STATE OF TENNESSEE, }
Monroe County. }

Personally appeared before me, W. N. Magill, clerk of the county court of said county, the within named Mrs. S. J. Callaway, the bargainor, with whom I am personally acquainted and who acknowledged that she executed the within instrument for the purposes therein contained.

Witness my hand, at office, in Madisonville, this 17 day of Aug., 1891.

[SEAL.] W. N. MAGILL, *Clerk.*

THE STATE OF TENNESSEE, }
Madison County. }

Personally appeared before me, F. W. Adamson, clerk of the county court of said county, R. A. Clarke and his wife, Emily Lea Clarke, the bargainors to the attached instrument, with whom I am personally acquainted, and who severally acknowledged that they executed the attached instrument for the purposes therein contained. And Emily Lea Clarke, wife of the said R. A. Clarke, having appeared before me privately and apart from her husband, the said Emily Lea Clarke acknowledged the execution of the said instrument to have been done by her freely, voluntarily and understandingly, without compulsion or constraint from her said husband, and for the purposes therein expressed.

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Witness, F. W. Adamson, clerk of said court, this 1st day of September, 1891.

[SEAL.] F. W. ADAMSON, *Clerk.*

STATE OF ILLINOIS, }
County of Madison. }

Before me, C. W. Leverett, a notary public duly appointed, commissioned and qualified in and for the county and State aforesaid, personally appeared James Barnard, Lavinia L. Barnard, Arabella Barnard, Louisa H. Gere, Wm. D. W. Barnard and Eaton Barnard,

he said James Barnard, a widower, the said Louisa H. Gere, a widow, the rest single, the within named bargainors, with whom I am personally acquainted and who acknowledged that they executed the within instrument for the purposes therein contained.

In testimony whereof, I have hereunto set my hand and notarial seal of office in the village of Upper Alton, Illinois, on this the 18th day of September, 1891.

C. W. LEVERETT,
Notary Public.

[SEAL.]

STATE OF ILLINOIS, }
County of Madison. }

Before me, C. W. Leverett, a notary public duly appointed, commissioned and qualified in and for the county and State aforesaid, personally appeared Susan W. Hastings and Albert H. Hastings, her husband, (2) two of the within named bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained.

And Susan W. Hastings, wife of the said Albert H. Hastings, having appeared before me privately and apart from her husband, the said Albert H. Hastings, acknowledged the execution of the said deed to have been done by her freely, voluntarily and understandingly, without compulsion or constraint from her said husband, and for the purposes therein contained.

In testimony whereof, I have hereunto set my hand and notarial seal at office in the village of Upper Alton, Illinois, on this the 19th day of September, 1891.

C. W. LEVERETT,
Notary Public.

[SEAL.]

193 STATE OF ILLINOIS, }
County of Madison. }

Before me, C. W. Leverett, a notary public duly appointed, commissioned and qualified in and for the county and State aforesaid, personally appeared James Barnard, with whom I am personally acquainted, and whose name is subscribed to the foregoing instrument as attorney in fact for Luke Lea Barnard, one of the within named bargainors, and who (the said James Barnard) acknowledged that he executed the within instrument as such attorney in fact for the purposes therein contained, and that the said instrument was by the said Luke Lea Barnard through him, the said James Barnard, as such attorney in fact, executed for the purposes therein contained.

In testimony whereof, I have hereunto set my hand and notarial seal at my office in Upper Alton, Illinois, on this 19 day of September, A. D. 1891.

C. W. LEVERETT,
Notary Public.

[SEAL.]

STATE OF TENNESSEE, }
Monroe County. }

I, Thos. McClellen, register for said county, hereby certify that the within deed — certificates thereunto attached, were filed in my office on the 25th day of October, 1899, and noted in Note Book C, p. 31. Recorded in Deed Book No. 5, page 250 *et seq.* This Oct. 25/99.

THOS. McCLELLEN, *Register.*

STATE OF TENNESSEE, }
Monroe County. }

I, Thos. McClellen, register in and for county and State aforesaid, do hereby certify that the foregoing is a full, true and perfect copy of the deed executed by H. B. Henegar *et al.* to Edward Hennegar, on July 15, 1891, and the certificates thereon, as the same appears of record in my office in Record of Deeds No. 6, pages 250 *et seq.*

Witness my hand, official seal. This October 26th, 1899.

[SEAL.] THOS. McCLELLEN, *Register.*

Ten cent documentary stamp.

Endorsed: Filed Feb. 13, 1901. J. T. Carter, deputy clerk.

194 EX. "N" TO DEPOSITION OF W. D. HALE.

Know all men by these presents: That I, Luke Lea Barnard, of the city of St. Louis, and State of Missouri, have made, constituted and appointed, and by these presents do make, constitute and appoint James Barnard, of the county of Madison and State of Illinois, my true and lawful attorney for me and in my name, place and stead, and as my act and deed to sell, convey and transfer any and all my lands and interests in lands, situated in any and all parts of the State of Tennessee, upon such terms, as to price, payment of purchase money and otherwise, as to my said attorney may seem fit and proper; and to make any and all contracts and agreements, of any and all kinds and descriptions relating to or in any way concerning said lands or interests therein, that he may see fit and proper to make, and, generally, to do any and all things, whatsoever, relating to, or in any way growing out of said lands, or my interest therein, which he may see fit and proper, hereby ratifying and confirming all that my said attorney may do in the premises.

In witness whereof I have hereunto set my hand and seal, this 15th day of July, A. D. 1891.

LUKE LEA BARNARD. [SEAL.]

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

Before me, a notary public duly appointed, commissioned and qualified in and for the — and State aforesaid, personally appeared Luke Lea Barnard, the within named bargainor, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

In testimony whereof I have hereunto set my hand and notarial seal at my office in the city of St. Louis, on this 23d day of Sept., A. D. 1891.

BYRON SHARP,
Notary Public.

[SEAL.]

My commission expires Nov. 23rd, 1893.

STATE OF TENNESSEE, }
Monroe County. }

I, Thos. McClellen, register for said county, hereby certify that the within power of attorney and certificate thereunto attached, were filed in my office on the 9 day of November, 1899, and noted in Note Book No. C, page 32. Recorded in Book No. G, page 339.

This 10th day of November, 1899.

THOS. McCLELLEN, *Register.*

195 STATE OF TENNESSEE, }
Monroe County. }

I, Thos. McClellen, register in and for the said county, do hereby certify that the foregoing is a full, true and perfect copy of the power of attorney executed by Luke Lea Barnard to James Barnard, as the same appears of record in my office.

Witness my hand and seal of said office this November 10 / 99.

[SEAL.] THOS. McCLELLEN, *Register.*

Ten cent U. S. documentary stamp.

Endorsed: Filed Feb. 13, 1901. J. T. Carter, deputy clerk.

EX. "O" TO DEPOSITION OF W. D. HALE.

Know all men by these presents: That in consideration of twenty-four hundred ($2,400) dollars, of which fifteen hundred ($1,500) dollars is in hand paid, and a note of Charles Seymour for nine hundred ($900) dollars, with interest from this date, due one year after date, drawn to the order of Edward Henegar and secured by vendor's lien, which is expressly declared and specifically retained

upon the property hereby conveyed, I, Edward Henegar, of Knoxville, Tennessee, have sold, and do hereby grant and convey unto George Peabody Wetmore, of Rhode Island, the following described property, to wit:

All the estate and lands of which William Park Lea died seized and also all the estate and lands of which Francis W. Lea died seized, situate in the county of Polk, in the State of Tennessee, being the same lands conveyed to me by deed of Susan J. Callaway, Lavinia Earnest, Margaret L. Henegar and husband, H. B. Henegar, Emily Lea Clarke and husband, R. A. Clarke, James Barnard, Lavinia L. Barnard, Arabella Barnard, Louise H. Gere, Luke Lee Barnard, D. W. D. Barnard, A. H. Hastings, Susan W. Hastings and Eaton Barnard, bearing date 5th July, 1891, and by deed of John M. Lea, dated 15th October, 1891, including and hereby conveying all the lands in said Polk county, of which said William Park Lea or F. W. Lea died the owners of, including specifically:

In fractional township two (2) south range two (2) east—

The northeast quarter of section fourteen (14), one hundred and sixty (160) acres.

196 In fractional township two (2) north range three (3) east—

The north fractional half of section five (5), one hundred and thirty-four (134) acres.

The north fractional half and the southwest fractional quarter of section eighteen (18), one hundred and eighty (180) acres.

The east half of the southwest quarter of section twenty-seven (27), eighty (80) acres.

The northeast quarter and the east half of the northwest quarter and the north half of the southeast quarter of section thirty-four (34), three hundred and twenty acres.

The south half and the northeast forty acres of the southwest quarter of section thirty-six (36), one hundred and twenty (120) acres.

In township one (1) range three (3) east—

The southeast quarter of section thirteen (13) one hundred and sixty (160) acres.

The east half of the southwest quarter of section thirty (30), eighty (80) acres.

The north half and the southwest forty (40) acres of the southeast quarter of section thirty-two (32), one hundred and twenty acres.

In fractional township two (2) south range four (4) east—

The southeast quarter of section seventeen (17), one hundred and sixty (160) acres.

The southeast quarter of section nineteen (19), one hundred and sixty (160) acres.

The northeast quarter and the southwest quarter of section thirty (30), three hundred and twenty (320) acres.

The northeast quarter of section twenty-two (22), one hundred and sixty (160) acres.

In fractional township one (1) south range three (3) east—

The southeast fractional quarter of section thirteen (13), fifty-eight

acres; as well as all other lands which descended to the heirs of the said William Park Lea and the heirs of F. W. Lea in said Polk county.

Also all the lands and interests in lands of which the late William Park Lea died seized, and also the estate and lands of which the said Francis W. Lea died seized, situate in the county of Mon-
197 roe, State of Tennessee, being the same lands conveyed to me by deed of Susan J. Callaway, Lavinia Earnest, Margaret Henegar and husband, H. B. Henegar; Emily Lea Clarke and husband, R. A. Clarke; James Barnard, Lavinia L. Barnard, Arabella Barnard, Luke Lea Barnard, W. D. W. Barnard, A. H. Hastings, Susan Hastings, Louise H. Gere and Eaton Barnard, by deed dated 5th day of July, 1891, and by deed of John M. Lea, dated 15th day of October, 1891, hereby conveying all the interest in lands of every description, which descended to the heirs of *the* William Park Lea and Francis W. Lea, in said Monroe county, except the following: The north half and the southwest quarter of section twelve (12) and the southeast quarter of section fifteen (15) in fractional township two (2) south range six (6) east.

This conveyance is without warranty or liability on part of grantors.

And I, Mary M. Henegar, wife of Edward Henegar, join in this instrument and release all right and claim, under homestead and dower laws to the said Wetmore.

In witness whereof, we, Edward Henegar and Mary M. Henegar, have hereunto set our hands and seals on this the 10th day of December, 1894.

EDWARD HENEGAR.
MARY M. HENEGAR.

Witness-:
M. D. ARNOLD.
F. W. PETWAY.

STATE OF TENNESSEE, }
Knox County. }

Personally appeared before me, Alex McMillan, a notary public of said county and State, Edward Henegar and Mary Henegar, the within named bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained. And Mary Henegar wife of the said Edward Henegar, having appeared before me privately and apart from her husband, said Mary Henegar acknowledged the execution of the said deed to have been done by her freely, voluntarily and understandingly, without compulsion or constraint from her said husband and for the purposes therein expressed.

Witness my hand and official seal at office, in Knoxville, this 10th day of December, 1894.

[SEAL.] ALEX McMILLAN,
Notary Public.

My commission as notary expires July 9 1898.

198 STATE OF TENNESSEE, }
Monroe County. }

I, Thos. McClellen, register for said county, hereby certify that the within deed and certificate attached were filed in my office on the 9″ day of November, 1899, and noted in Note Book C, page 32. Recorded in Deed Book 5, pages 271, *et seq.* This 10″ day of November, 1899.

THOS. McCLELLEN, *Register.*

STATE OF TENN., }
Polk County. }

November 16th, 1899, at 12:10 o'clock p. m.—Then was the foregoing deed of conveyance noted in Note Book No. 1, page 38, and recorded in Registration Record, No. 9, pages 510, *et seq.*

E. L. AUBURN, *Register,*
By A. E. LOVE, *Dep. Reg.*

Transfer tax paid.

Endorsed: Filed Feb. 13, 1901. J. T. Carter, deputy clerk.

EXHIBIT "Q" TO DEPOSITION OF W. D. HALE.

(Endorsed:) Filed Feb. 13, 1901. J. T. Carter, deputy clerk.

This contract and lease, made this 22 day of February, A. D. 1893, between George Peabody Wetmore and the heirs of V. K. Stevenson, to wit, Hugh Stevenson, Matilda E. Alloway, and N. E. Alloway, Eloise Stevenson Kernochan and J. L. Kernochan, Paul E. Stevenson and Maxwell Stevenson, lessors, and Joseph Presswood and Jeremiah Roberts as tenants.

Witnesseth: That in renewal of previous leases, the said Wetmore and Stevenson heirs lease and let, and the said Presswood and Roberts take as tenants the following described land, situate in the 20th civil district of Monroe county, State of Tennessee, further described as follows:

All of fractional township two (2) in range seven (7) east of the basis line in the Ocoee district, bounded on the northeast and south by the divide of the waters of Tellico river, from the waters of Snowbird, Beaver Dam and Hanging Dog creek-, on the North
199 Carolina side, and including in this lease all the land on the waters of Tellico river, in said township, estimated at 7,114 acres.

Also in fractional township two, south range six, east, sections thirty-one and thirty-two, making 1280 acres.

Also in fractional township two, south range six east, west half of section five, all of section six, all of fractional section seven and

northwest fractional quarter of section eight, estimated at 1660 acres.

On the following terms and conditions:

This lease gives tenancy at will of lessor- and tenancy in common with other tenants of said lessors, on all of said land, but so much of the above land as is below described, to wit:

The land now actually enclosed and occupied by said tenants on the waters of Tellico river, including fields and houses, and their appurtenances as well as the Bryson place.

The said lessors agree to allow said tenants the use of until notice given that the land is required by lessors, and this notice shall be given so as to allow time to remove annually planted crops that have been put in before notice.

The said tenant- agrees not to sub-let nor assign this lease without the written consent of lessors; the right is also reserved to lessors to enter for mining and lumbering and road-making work of its own, or its assignees or contractors, on any part of said property at any time, but if growing annual crops are disturbed it will pay for actual injury to them. The said tenant- agrees to pay rent, two dollars a year, payable October 15th, which has been paid for 1893, in lodging for party, and to hold all of said land as first described above for said lessor-, and to deliver possession only to the order of said lessor-; to waste no timber and to look after the interests of said lessor- so far as possible.

No timber is to be cut, except what is necessary to keep up fencing and firewood made from the laps and tops of trees cut for rails. No poplar, walnut, ash or cherry timber to be cut for any purposes, rails or buildings, and no tan-bark peeled or chestnut oaks cut. No more land cleared without written permission from said lessors.

Any violation by the tenant- of the terms of this lease, shall at option of lessors, terminate this lease, and entitle lessor- to immediate possession of the premises. Said tenants hereby release to said lessor- any and all claims on any of said lands.

200 Witness our hands, this 22nd day of February, A. D. 1893.

his
JOSEPH x PRESSWOOD.
mark.

his
ZIMARIAH x ROBERTS.
mark.

By the hand of JOSEPH PRESSWOOD.

Attest:

G. W. METCALFE.
G. W. TALLENT.
W. D. HALE.

EXHIBIT "R" TO DEPOSITION OF W. D. HALE.

(Endorsed:) Filed Feb. 13, 1901. J. T. Carter, deputy clerk.

This contract and lease made this 25 day of May, A. D. 1893, between George Peabody Wetmore, and the heirs of V. K. Stevenson, to wit: Hugh Stevenson, Matilda E. Alloway and N. E. Alloway, Eloise Stevenson Kernochan and J. L. Kernochan, Paul E. Stevenson and Maxwell Stevenson, lessors, and N. M. Rhodes and Buna Rhodes, as tenant-.

Witnesseth: That in renewal of previous leases, the said Wetmore and Stevenson heirs, lease and let, and the said N. M. and Buna Rhodes, take as tenant- the following described land, situate in the 17th civil district of Monroe county, State of Tennessee, further described as follows:

All of fractional township two, in range seven east of the basis line in the Ocoee district, bounded on the northeast and south by the divides of the Tellico river from the waters of Snow Bird, Beaver Dam and Hanging Dog creek-, on the North Carolina side, and including in this lease all the land on the waters of Tellico river in said township, estimated at 7114 acres.

Also in fractional township two, south range six east, sections thirty-one and thirty-two, making 1280 acres.

Also in fractional township two, south range six east, west half of section five, all of section six, all of fractional section seven, and northwest fractional quarter of section eight, estimated at 1660 acres. On the following terms and conditions:

This lease gives tenancy at will of lessors and tenancy in
201 common with other tenants of lessors on all of said land, but so much of the above land as is below described, to wit:

The land now actually enclosed and occupied by said tenant- on the waters of Tellico river, including fields and houses and their appurtenances.

The said lessors agree to allow said tenant- the use of until notice given that the land is required by lessors, and this notice shall be given so as to allow time to remove annually planted crops which have been put in before notice.

The said tenant- agrees not to sublet nor assign this lease without the written consent of lessors; the right is also reserved to lessors to enter for mining and lumbering and road-making work of its own or its assignees or contractors, on any part of said property at any time, but if growing annual crops are disturbed, it will pay for actual injury to them. The said tenants agrees to pay rent one dollar ($1.00) per year, payable on October 15th, and to hold all of said land as first described above, for said lessors, and to deliver possession only to the order of said lessors; to waste no timber, and to look after the interests of said lessors as far as possible.

No timber is to be cut except what is necessary to keep up fencing

and firewood made from the laps and tops of trees cut for rails. No poplar, walnut, ash or cherry timber is to be cut for any purpose, rails or building, and no tan-bark peeled or chestnut oaks cut. No more land cleared without written permission from said lessors.

Any violation by the tenant- of the terms of this lease shall at option of lessors terminate this lease, and entitle lessors to immediate possession of the premises. Said tenants hereby release to said lessor- any and all claims on any of said land.

Witness our hands, this — day of ——, A. D. 1893.

her
N. M. x RHODES.
mark.
her
BUNA x RHODES.
mark.

Attest:

W. D. HALE.
G. W. TALLENT.
J. A. MORRIS.

202 *Transcript of Cause of V. K. Stevenson et al. vs. Tip Lovingood et al.*

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

VERNON K. STEVENSON, MATILDA C. ALLOWAY and Her Husband, Nathaniel E. Alloway; Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, the Last Four of Whom are Minors and Sue by Their Next Friend, Hugh Stevenson, and Anna L. Stevenson, Widow of Vernon K. Stevenson, All Citizens and Residents of the City and State of New York, and George Peabody Wetmore, a Citizen and Resident of the State of Rhode Island,

vs.

TIP LOVINGOOD, KI WOODY, COLUMBUS HOSS, JASPER FAIN, and William M. Marr, All Citizens and Residents of the County of Monroe, State of Tennessee, and William M. Nixon, a Resident of Hamilton County, Tennessee.

The said plaintiffs sue the said defendants to recover the following described land:

Situate in Monroe county, in the State of Tennessee, and in the northern division of the eastern district of Tennessee. Those certain tracts of land in Monroe county, State of Tennessee, and in that part of said county, which is included in the Ocoee district and which lands are described on the map of said district on file in the entry taker's office of said district at Cleveland, Tenn., and described as follows:

All the lands in fractional township 2, and range 7 east of the basis line in the Ocoee district, and granted in the register's office of said district by Nos. 5603, 5604, 5605, 5606, 5607, 5608, 5609, 5610, 5965, 5966, 5969, 5980, 5981, 5982, 5986, 6120, 6121, 6122, 6123, 6149, 6150, 6151, containing 7114 acres.

203 Sec. 33 granted by 6136, southeast and southwest quarters of section 34, by grant 6135, northeast and northwest fractional quarters of section 34 by grant 5602, southwest quarter of section 35, by grant 5975, and east half of the southeast quarter of section 32, by grant 5977, which lands are in fractional township 1, north and range 6 east, etc., containing 1433 acres. Section 3, section 5 and southeast quarter and northeast fractional quarter of section 6, by grants 6131, 6132 and 6135, which lands are in fractional township 2, north and range 6 east, etc., of the basis line in the Ocoee district, and containing 1600 acres. East half of the southwest, northwest, northeast and southeast quarters of section 7, by grant 5987, east half of the northwest and south half and northeast corner of the southwest quarter- of section 18, by grant 6146, northeast and southeast quarters of section 18, by grant 6145, section 17 by grant 6147, section 30 by grant 6116, section 32 by grant 6114, section 29 by grant 6117, section 31 by grant 6115, which are in fractional township 1, south and range 6, east, of the basis line in said district, containing 4280 acres. Section 6, by grant 6160, northwest, southwest, and southeast quarters of section 7 by grant, 6164, northeast, southeast, and southwest quarters of section 18 by grant 6104, section 19 by grant 6103, section 30 by grant 5993, and section 31 by grant 5992, which lands are in fractional township 2, south and range 6 east, of the basis line in said district, containing 3520 acres. Section 6 by grant 6152, northeast fractional and northwest quarters of section 7 by grant 6154, northwest quarter and the southwest fractional quarter of section 6 by grant 6153, which are in fractional township 3 south and range 6, east of the basis line in said district, and containing 1142 acres. Section 15 by grant 5932, section 22 by grant 5933, northwest quarter of section 26 by grant 5967, northwest quarter of section 35 by grant 5974 and northeast quarter of section 21 by grant 5924, which lands are in fractional township 3, north and range 5, east of the basis line in said district, containing 1760 acres. Section 15 by grant 5985 (or 5588), section 16 by grant 5952, northeast and northwest quarters of section 22 by grant 5954, southeast and southwest quarters of section 29 by grant 5946, northeast quarter of section 21 by grant 5941, northeast, west half of southeast and northwest quarters of section 10 by grant 5939, southwest quarter of section 21 by grant 5089, section 28 by grant 5953 and 5584, southwest quarter of section 10 by grant 5947, east of the northeast quarter of section 29 by grant 5588, southeast quarter of section 8 by grant 5943, and

204 southeast quarter of section 17 by grant 5473, which lands are in fractional township 1 north and range 4, east of the basis line in said district, containing 4400 acres, which in the aggregate contain twenty-five thousand two hundred and forty-nine acres,

being the same lands conveyed to W. M. Wetmore by deed from Francis W. Lea, registered in the register's office of Monroe county, Tennessee, pages 257 & 258, of Book O.

Also one undivided moiety of the following several tracts or parcels of land, situate in said Monroe county, Tennessee, in said district of Ocoee, granted and conveyed to W. M. Wetmore by grants from the State of Tennessee, described as follows, viz.:

By grant 7941, a tract containing 1885 acres, situated in the 5th range, east of the basis line, fractional township 1 south and 1st, 12th, 2nd & 3rd section-, being the fractional sections one and three, northeast and northwest quarter- of section two and the southeast and southwest fractional quarters of second sections, beginning at the northeast corner of said quarter. By grant 7932, a tract containing 618 acres, situate in the 6th ranges east of the basis line, fractional township 1 north and 25, 36, 26 & 35th sections, being the northeast fractional of section 36, southeast and northwest fractional quarter- of section 25, northeast and southwest fractional quarter- of section 26, and northwest quarter of 35th section, beginning at the northeast corner of said quarter.

By grant 7953, a tract containing 640 acres, situate in the 4th range east of the basis line, fractional township 1 north and 1st & 12th section-, being the northeast and northwest quarters of 12th southwest of the first, north halves of the southeast and southwest quarters of the 12th sections, beginning at the northeast corner of said quarter. By grant 7934, a tract containing 160 acres, situate in the 4th range east of the basis line, fractional township 1 north and 17th section, being the northeast quarter of said sect[illegible], beginning at the northeast corner of said quarter. By grant 7[illegible], a tract containing 640 acres, situate in the 6th range east of the basis line, fractional township 2 north and 4th section, being the northeast, northwest, southeast and southwest quarters of said sections, beginning at the northeast corner of said quarter. By grant 7936, a tract containing 160 acres, situate in the 6th range east of the basis line, fractional township 2 north of the 6th section, being the southeast quarter of said section, beginning at the southwest corner of said quarter. By grant 7937, a tract containing
640 acres, situate in the 5th range east of the basis line,
205 fractional township 1 south and 31st & 32nd section-, being
the northeast and southeast of the 31st and northwest and southwest quarters of the 32nd section, beginning at the northeast corner of said quarter. By grant 7942, containing 1280 acres, situate in the 6th range east of the basis line, fractional township 2 south and 29 and 32 section-, being the northeast, northwest, southeast and southwest quarters of said sections, beginning at the northeast corner of said quarter. Also one undivided moiety of the following tracts or parcels of land situate in said county of Monroe, State of Tennessee, viz: The northeast, southeast, northwest and southwest quarters of sections one and twelve in the third fractional township, north in range 5, east of the basis line in the Ocoee district, being the land embraced in grant 6725 from the State of Tennessee, esti-

mated to contain 1280 acres, more or less. Also the southeast, northeast, southwest and northwest quarters of sections eleven and two in the 3rd fractional township north, range 5, east of the basis line in the Ocoee district, being the land embraced in grant No. 6726 from the State of Tennessee, estimated to contain 1280 acres, more or less. Also the northeast and southeast, northwest and southwest quarters of section- 13 & 14, in the third fractional township north in range 5, east of the basis line in the Ocoee district, being the land embraced in grant 6727 and estimated to contain 1280 acres, more or less. Also the northeast, southeast, northwest and southwest quarters of sections 24 & 25 in the third fractional township north in range 5 east of the basis line in the Ocoee district, being the land embraced in grant No. 6728, estimated to contain 1280, twelve hundred and eighty acres. Also the northeast, northwest, southeast and southwest quarters of section twenty-five, and the northeast, southeast and southwest quarters of section twenty-six in third fractional township north in range five, east of the basis line in the Ocoee district, being the land embraced in grant 6729, estimated to contain eleven hundred and twenty (1120) acres. Also the northeast, southeast, northwest and southwest quarters of section twenty-seven and the southeast, northwest and southwest fractional quarters of section twenty-one in the third fractional township north, range 5, east of the basis line in the Ocoee district, being the land embraced in the grant No. 6730 and estimated to contain nine hundred and ninety-three (993) acres, more or less. Also the northeast, northwest, southeast and southwest quarters of section thirty-six and the northeast, southwest and southeast quarters of section thirty-five in the third fractional township north in range 5 east of the basis line in
206 the Ocoee district, being the land embraced in grant No. 6731, estimated to contain eleven hundred and twenty acres (1120), more or less. Also the northeast, northwest, southeast and southwest quarters of section thirty-four in the third fractional township north in range 5, east of the basis line in the Ocoee district, being the land embraced in grant No. 6732 and containing six hundred and forty acres (640) more or less. Also the southeast and southwest quarters of section three and northwest, northeast, southeast and southwest quarters of section ten in the third fractional township north in range 5, east of the basis line in the Ocoee district, being the land embraced in grant No. 6733 and estimated to contain 980 acres, more or less. Also the northeast and southeast fractional quarters of section nine in the third fractional township north in range five east of the basis line in Ocoee district, being the same land contained in grant No. 6734 and estimated to contain 399 acres, more or less. Also the southwest fractional quarters of section twenty-eight, northwest of the same, southeast fractional quarter of section sixteen, southwest fractional quarter of section 21, northeast of the same, northwest fractional quarter of section- eleven and fifteen, southeast fractional quarter of section ten and northwest and southwest fractional quarter- of section thirty-two in the first fractional township north, range third, east of the basis line in the

Ocoee district, being the same land embraced in grant No. 6735 and estimated to contain five hundred and fifty-two 552 acres, more or less, and containing in the aggregate forty-two thousand one hundred and ninety-six acres, be the same more or less, and being the same lands described in deed executed by Moses W. Wetmore to W. S. Wetmore, Feb'y 14th, 1853, and registered in the register's office of Monroe county, Tennessee, Book O, pages 534, 535, 536, 537 & 538 of which lands, which are worth more than five thousand dollars, they were possessed, claiming in fee, before the commencement of this suit, and after such possession accrued the defendants on the first day of January, 1888, entered thereon, and unlawfully withhold and detain the same, together with five thousand dollars due for the detention thereof.

CHARLES SEYMOUR,
ANDREWS & THORNBUGH,
Att'ys for Pl'ff.

Filed January 13, 1899.

H. H. TAYLOR, *Clerk.*

207 UNITED STATES OF AMERICA, } ss:
Eastern District of Tennessee, }

The United States of America to Tip. Lovingood, Ki. Woody, Columbus Hoss, Jasper Fain, Wm. M. Marr, & W. M. Nixon, Greeting:

We command you and every one of you to appear before our judge of our circuit court of the United States of America for the eastern district of Tennessee, at Knoxville, on the 5th day of August next, that being the rule day to which this writ of subpœna is returnable, to answer to the bill of complaint of Vernon K. Stevenson *et al. vs.* yourselves, this day filed in the clerk's office of said court, in said city of Knoxville, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the eastern district to execute.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Knoxville, aforesaid, this 13th day of July, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence 114.

H. H. TAYLOR, *Clerk.*

MEMORANDUM.—The above named defendants are hereby notified that unless they enter their appearance in the clerk's office of said court at Knoxville, aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

[Seal of the Court.]

H. H. TAYLOR, *Clerk.*

(Endorsed:) No. 864. Circuit court of the United States, eastern district of Tennessee. Vernon K. Stevenson *vs.* Tip. Livingood *et al.* Chancery subpœna. Returnable to rule day 5th in Aug., A. D. 1889. H. H. Taylor, clerk. Issued July 13th, A. D. 1889. H. H. Taylor clerk, Monroe county. Jasper Fain not found.

208 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Tennessee, }

The United States of America to Tip. Lovingood, Ki. Woody, Columbus Hoss, Jasper Fain, Wm. M. Marr, & W. M. Nixon, Greeting:

We command you and every one of you to appear before our judge of our circuit court of the United States of America for the eastern district of Tennessee, at Knoxville, on the 5th day of August next, that being the rule day to which this writ of subpœna is returnable, to answer to the bill of complaint of Vernon K. Stevenson *et al. vs.* yourselves, this day filed in the clerk's office of said court, in said city of Knoxville, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the eastern district to execute.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Knoxville, aforesaid, this 13th day of July, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence 114.

H. H. TAYLOR, *Clerk.*

MEMORANDUM.—The above named defendants are hereby notified that unless they enter their appearance in the clerk's office of said court at Knoxville, aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

[Seal of the Court.]

H. H. TAYLOR, *Clerk.*

(Endorsed:) No. 864. Circuit court of the United States, eastern district of Tennessee. Vernon K. Stevenson *vs.* Tip. Livingood *et al.* Chancery subpœna. Returnable to rule day 5th in Aug., A. D. 1889. H. H. Taylor, clerk. Issued July 13th, A. D. 1889. H. H. Taylor clerk, Hamilton county.

Came to hand July 14/89, executed in Hamilton county, at Chattanooga, on W. M. Nixon, by delivering him a copy of this writ and a copy of the bill. This the 15th day of July, 1889.

C. J. DUFF,
Dept. U. S. M.

209 Came to hand July 29, 1889, and executed by summoning Tip Lovingood, Ki. Woody, C. Hoss, W. Marr and delivering copy of bill to each. Monroe county. Jasper Fain not to be found in the east. dist. of Tennessee.

WESLEY GILES, *D. U. S. M.*

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

VERNON K. STEVENSON ET AL.
vs.
TIP. LOVINGOOD ET AL. } Disclaimer.

And now comes said defendants, W. M. Nixon and W. W. Marr, by their attorney, and by way of disclaimer say that they are not and have not been in possession of the lands in the plaintiff's declaration mentioned, or of any part thereof, and that they disclaim all right, title or interest therein, or in any part of said lands, and this they are ready to verify, &c.

W. M. NIXON,
W. W. MARR,
By PRITCHARD, *Attorney.*

(Endorsed:) Filed Sep. 2, 1889. H. H. Taylor, U. S. cir. ct. cl'k.

Be it remembered that at a circuit court of the United States, began and held for the northern division of the eastern district of Tennessee, at the court house in the city of Knoxville, within said district and the sixth circuit, on the 2nd Monday, it being the 14th day of July, A. D. 1890.

Present and presiding, the Honorable D. M. Key, judge, &c.

The following proceedings were had, to wit:

THURSDAY MORNING, *November* 13, 1890.

Court met pursuant to adjournment.

Present and presiding, the Honorable D. M. Key, judge, &c.

210 VERNON K. STEVENSON ET AL.
vs.
TIP. LOVINGOOD ET AL. } No. 864.

This cause is continued until the next term of the court for want of counsel.

Be it remembered that at a circuit court of the United States, began and held for the northern division of the eastern distrrict of Tennessee, at the court house in the city of Knoxville, within said district and the sixth circuit on the 2nd Monday, it being the 13th day of July, A. D. 1891.

Present and presiding, the Honorable D. M. Key, judge, &c.

The following proceedings were had, to wit:

MONDAY MORNING, *November* 16, 1891.

Court met pursuant to adjournment.
Present and presiding, the Honorable D. M. Key, judge, &c.

VERNON K. STEVENSON ET AL.
vs.
TIP. LOVINGOOD ET AL. } No. 864.

This case is continued until the next term of the court without terms.

Be it remembered that at a circuit court of the United States, began and held for the northern division of the eastern district of Tennessee, at the court house in the city of Knoxville, within said district and the sixth circuit, on the 2nd Monday, it being the 11th day of January, A. D. 1892.

Present and presiding, the Honorable D. M. Key, judge, &c.
211 The following proceedings were had, to wit:

TUESDAY MORNING, *January* 26, 1892.

Court met pursuant to adjournment.
Present and presiding, the honorable judge, &c.

In the U. S. Circuit Court, Eastern District of Tennessee, Northern Division.

VERNON K. STEVENSON ET AL.
vs.
TIP. LOVINGOOD ET AL. } No. 864.

In this cause, it duly appearing to the court that the defendants, Tip Lovingood, Ki. Woody and Columbus Hoss have been regularly brought into court by service of subpœna on or before Aug. 3rd, 1889, and have made no defense, but are in default, it is ordered on motion of the complainants that as to the said defendants the bill be taken for confessed and the cause set for hearing *ex parte*, and it is further ordered in this cause, on motion of the complainants, that an alias subpœna issue as to the def't Jasper Fain.

WEDNESDAY MORNING, *January* 27, 1892.

Court met pursuant to adjournment.
Present and presiding, the Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee.

In Circuit Court of the United States, Northern Division of Eastern District of Tennessee.

VERNON K. STEVENSON ET AL.
vs.
TIP. LOVINGOOD ET AL. } Cause No. 864.

This cause came on to be heard this 27th day of January, A. D. 1892, before the Honorable D. M. Key, holding the circuit
212 court for the northern division of the eastern district of Tennessee, at Knoxville, Tennessee, and it appearing to the satisfaction of the court that subpœna was duly issued against Jasper Fain, one of the defendants in the above entitled cause, and that the marshal for said district has returned that said Fain is not to be found in said district, it is ordered that said Fain be directed to appear, plead, answer or demur to the complainants' bill on or before the 1st day of March, 1892, and that copy of this order be served on the said Jasper Fain, if practicable, wherever found, or if such personal service is not practicable, it shall be published for four consecutive weeks in the Madisonville Gazette, a newspaper published at Madisonville, in Monroe county, in said district.

And it is further ordered that in case said Fain does not appear within the time so limited, the court, upon proof of the service or publication of said order, and of the performance of the directions contained therein, will entertain jurisdiction and proceed to the hearing and adjudication of above suit in the same manner as if said Fain had been served with process in said district.

THURSDAY MORNING, *February* 25, 1892.

Court met pursuant to adjournment.

Present and presiding, the Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee.

Court met pursuant to adjournment.

In Circuit Court of the United States, Northern Division of Eastern District of Tennessee.

VERNON K. STEVENSON ET AL.
vs.
TIP. LOVINGOOD ET AL. } Cause No. 864.

In this cause, it duly appearing to the court that further time should be granted for the service of process upon Jasper Fain, one of the defendants it is ordered that the order made on the 27th of January be renewed and extended so that service of process and publication may be made for appearance of the said defendants at the July term of the court.

213 Be it remembered that at a circuit court of the United States began and held for the northern division of the eastern district of Tennessee, at the Federal court rooms in the city of Knoxville, within said district and the sixth circuit, on the second Monday, it being the 11th day of January, A. D. 1892.

Present and presiding, the Honorable D. M. Key, United States district judge for the eastern and middle districts of Tennessee.

The following proceedings were had, to wit:

WEDNESDAY MORNING, *January 27th*, 1892.

Court met pursuant to adjournment.

Present and presiding, the Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee.

In Circuit Court of the United States, Northern Division of Eastern District of Tennessee.

VERNON K. STEVENSON ET AL.
vs.
TIP. LOVINGOOD ET AL. } Cause No. 864.

This cause came on to be heard this 27th day of January, A. D. 1892, before the Honorable D. M. Key, holding the circuit court of the United States for the northern division of the eastern district of Tennessee, at Knoxville, Tennessee, and it appearing to the satisfaction of the court that subpœna was duly issued against Jasper Fain, one of the defendants in the above entitled cause, and that the marshal for said district has returned that said Fain is not to be found in said district, it is ordered that said Fain be directed to appear, plead, answer or demur to the complainants' bill on or before the first day of March, 1892, and that copy of this order be served on the said Jasper Fain, if practicable, wherever found, or if such personal service is not practicable, shall be published for four consecutive weeks in the Madisonville Gazette, a newspaper published at Madisonville, in Monroe county, in said district.

And it is further ordered that in case said Fain does not appear within the time so limited, the court, upon proof of the service
214 or publication of said order and of the performance of the directions contained therein, will entertain jurisdiction and proceed to the hearing and adjudication of the above suit in the same manner as if the said Fain had been served with process in said district.

THURSDAY MORNING, *February 25th*, 1892.

Court met pursuant to adjournment.

Present and presiding, the Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee.

In Circuit Court of the United States, Northern Division of Eastern District of Tennessee.

VERNON K. STEVENSON ET AL.
vs.
TIP. LOVINGOOD ET AL. } Cause No. 864.

In this cause, it duly appearing to the court that further time should be granted for the service of process upon Jasper Fain, one of the defendants, it is ordered that the order made on the 27th of January be renewed and extended so that service of process and publication may be made for appearance of said defendant at the July term of the court.

UNITED STATES OF AMERICA,
Eastern District of Tennessee, Northern Division, } *ss:*

I, H. H. Taylor, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing orders are truly taken and correctly copied from the journal of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at the city of Knoxville, Tennessee, this 23rd day of April, A. D. 1892.

[Seal of Circuit Court, District of East Tennessee.]

H. H. TAYLOR, *Clerk,*
By J. T. CARTER,
Deputy Clerk.

215 (Endorsed:) No. 864. In the U. S. circuit court at Knoxville. Vernon K. Stevenson *et al.*, against Jasper Fain *et al.* Copy of orders. Executed this 26th day of May, 1892, by reading and delivering a copy in person to Jasper Fain. Tyre Glenn, marshal. By A. B. Panther, D. M. United States marshal, Received May 14, 1892, Western dist. North Carolina. Filed May 28th, 1892. H. H. Taylor, clerk.

Be it remembered, that at a circuit court of the United States, began and held for the northern division of the eastern district of Tennessee, at the court house in the city of Knoxville, within said district and the sixth circuit, on the second Monday, it being the 11th day of July, A. D. 1892.

Present and presiding, the Honorable D. M. Key, judge, &c.
The following proceedings were had, to wit:

THURSDAY MORNING, *Aug.* 11, 1892.

Court met pursuant to adjournment.
Present and presiding, the honorable judge, &c.

In Circuit Court of the United States, Northern Division of Eastern District of Tennessee.

VERNON K. STEVENSON ET AL.
vs.
TIP. LIVINGOOD ET AL. } Cause No. 864.

On motion of the plaintiffs, the defendants, Tip Lovingood, Ki Woody, Columbus Hoss and Jasper Fain, who were duly summoned, and who have failed to appear, plead or demur to the plaintiffs' declaration, within the time limited by law, were solemnly called to come into court and defend this suit, but have failed to do so; and it appearing from the pleadings filed in this cause that Wm.
216 H. Marr and Wm. M. Nixon have disclaimed any claim or title in and to the land described in the plaintiffs' declaration:

It is therefore adjudged that the plaintiffs recover of the said defendants, Tip Lovingood, Ki Woody, Columbus Hoss, Jasper Fain, Wm. M. Marr and Wm. M. Nixon the premises described in the declaration filed in this cause, which lands are as follows, to wit:

In fractional township 2, range 7 east, Ocoee district. Section 5, section 6, section 7, section 8, section 9, section 16, section 17, section 18, section 19, section 20, section 21, section 28, section 29, section 30, section 31, section 32.

In fractional township 1 north range 6 east, Ocoee district. Southeast quarter section 25, northwest quarter section 25, north half and southwest quarter of section 26, east half of southeast quarter of section 32, section 33, section 34, west half of section 35, northeast quarter of section 36.

In fractional township 2 north, range 6 east, Ocoee district. Section 3, section 4, section 5, east half and southwest quarter of section 6.

In fractional township 1 south range 6 east, Ocoee district. Northeast, northwest and southeast quarters of section 7, east half of southwest quarter of section 7, section 17, northeast and southeast of section 18, east half of northwest quarter of section 18, south half and northeast 40 acres of southwest quarter of section 18, section 29, section 30, section 31, section- 32, 33, 34, 35.

In fractional township 2, south range 6 east Ocoee district. Section 6, northwest and southwest quarters of section 7, southeast quarter of section 7, east half of section 18, southwest quarters of section 18, section 19, section 29, section 30, section 31, section 32.

In fractional township 3 south range 6 east, Ocoee district. Section 5, section 6, section 7, northwest quarter of section 8.

In fractional township 3, north range 5, east, Ocoee district. Section 1, section 2, south half of section 3, east half of section 4, east

half of section 9, section 10, section 11, section 12, section 13, section 14, section 15, southeast quarter of section 20, section 21, section 22, section 23, section 24, section 25, section 26, section 27, southeast quarter of section 29, section 34, section 35, section 36.

In fractional township 1, south range 5 east, Ocoee district. Section 1, section 2, section 3, northeast quarter of section 12, east half of section 31, west half of section 32.

217 In fractional township 1, north range 4 east, Ocoee district. Southwest quarter of section 1 southeast quarter of section 8, section 10, north half of section 12, north half of south half of section 12, section 15, section 16, east half of section 17, section 21, north half and southwest quarter of section 22, section 28, south half of section 29, east half of northeast quarter of section 29, southeast quarter of section 30.

In fractional township 1, north range 3 east, Ocoee district. Southeast quarter of section 10, northwest quarter of section 11, northwest quarter of section 15, southeast quarter of section 16, northeast quarter of section 21, southwest quarter of section 21, west half of section 28, section 32. Reference being made to the official survey and maps and records of the Ocoee district of the State of Tennessee for further description of said lands. And one dollar for the detention thereof, and that a writ of possession issue out of this court to put the said plaintiffs in possession and occupation of the said lands.

And judgment is given in favor of said plaintiffs, against all of the said defendants, except Marr and Nixon, for all the costs of this cause for which writ of execution is awarded.

The President of the United States of America to the marshal of the eastern district of Tennessee, Greeting:

Whereas, on the 11th day of August, 1892, in the circuit court of the United States for said district, at Knoxville, in a certain cause therein pending, wherein Vernon K. Stevenson, Matilda C. Alloway, Nathaniel E. Alloway, Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, Anna L. Stevenson, widow of V. K. Stevenson, and George Peabody Wetmore, were complainants, and Tip Lovingood, Ki Woody, Columbus Hoss, Jasper Fain, William M. Nixon and William M. Marr, were defendants, it was ordered and decreed that a writ of possession issue to put the said complainant into possession of certain tracts or parcels of land lying in Monroe county, Tennessee, to wit:

In fractional township 2, range 7 east, Ocoee district. Section 5, section 6, section 7, section 8, section 9, section 16, section 17, section 18, section 19, section 20, section 21, section 28, section 29, section 30, section 31, section 32.

In fractional township 1, north range, east Ocoee district.
218 Southeast quarter seetion 25, northwest quarter section 25, north half and southwest quarter 26, east half of southeast quarter of section 32, section 33, section 34, west half of section 35, northeast quarter of section 36.

In fractional township 2, north range 6 east, Ocoee district. Sec-

tion 3, section 4, section 5, east half and southwest quarter of section 6.

In fractional township 1, south range 6 east, Ocoee district. Northeast, northwest and southeast quarters of section 7, east half of southwest quarter of section 7, section 17, northeast and southeast quarter of section 18, east half of northeast quarter of section 18, south half and northeast 40 acres of southwest quarter of section 18, section 29, section 30, section 31, section 32, section 33, section 34, section 35.

In fractional township 2, south range 6, east, Ocoee district. Section 6, northwest and southwest quarter- of section 7, southeast quarter of section 7, east half of section 18, southwest quarter of section 18, section 19, section 20, section 30, section 31, section 32.

In fractional township 3, south range 6 east, Ocoee district. Section 5, section 6, section 7, northwest quarter of section 8.

In fractional township 3, north range 5 east, Ocoee district. Section 1, section 2, south half of section 3, east half of section 4, east half of section 9, section 10, section 11, section 12, section 13, section 14, section 15, southeast quarter of section 20, section 21, section 22, section 23, section 24, section 25, section 26, section 27, southeast quarter of section 29, section 34, section 35, section 36.

In fractional township 1, south range 5 east, Ocoee district. Section 1, section 2, section 3, northeast quarter of section 12, east half of section 31, west half of section 32.

In fractional township 1, north range 4 east, Ocoee district. Southwest quarter of section 1, southeast quarter of section 8, section 10, north half of section 12, north half of south half of section 12, section 15, section 16, east half of section 17, section 21, north half and southwest quarter of section 22, section 28, south half of section 29, east half of northeast quarter of section 29, southeast quarter of section 30.

In fractional township 1, north range 3 east, Ocoee district. Southeast quarter of section 10, northwest quarter of section 11, northwest quarter of section 15, southeast quarter of section 16, northeast quarter of section 21, southeast quarter of section 21, west half of section 28, section 32.

219 Reference being made to the official survey and map and records of the Ocoee district of the State of Tennessee for further description of said lands.

You are, therefore, commanded to take with you the force of the district if necessary, and cause the said Vernon K. Stevenson, Matilda C. Alloway, Nathaniel E. Alloway, Hugh Stevenson, Paul E. Stevenson, Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, Anna L. Stevenson, widow of Vernon K. Stevenson, and George Peabody Wetmore, to have possession of said property. And return to said court at a court to be held at Knoxville, on the second Monday of July, next, how you have executed this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Knoxville, in the said dis-

trict, the 10th day of February, in the year of our Lord, 1893, and of our Independence the 117th.

H. H. TAYLOR, *Clerk*,
By J. T. CARTER,
Deputy Clerk.

[The Seal of the Circuit Court, District of East. Tenn.]

Came to hand at Madisonville, Feb. 16, 1893. Executed in full as commanded as to Tip Lovingood, by removing him from the premises described and putting the companies in possession through their agent, W. D. Hale, on May 24, 1893. Also executed as to Ki Woody and Columbus Hoss, May 25, 1893, in the same manner. The def't, Jasper Fain, was permitted to remain through said agent, Mr. Hale, under an agreement between them. The def'ts, William M. Nixon and William M. Marr were not found in possession of any portion of said lands, and nothing done as to them.

G. W. TALLENT,
Dep. U. S. M.

Giving 3 possessions	$6 00
27 mi. going, May 24 and 25, 1893	1 62
3 days' horse hire	3 00
3 days' board self and horse	3 00
	$13 62

(Endorsed:) Issued February 10, 1893. H. H. Taylor, clerk. By J. T. Carter, deputy clerk. Monroe county. Filed June 7, 1893. H. H. Taylor, clerk.

220 Be it remembered that at a circuit court of the United States began and held for the northern division of the eastern district of Tennessee, at the court house in the city of Knoxville, within said district, and the sixth circuit, on the 2nd Monday, it being the 8 day of January, A. D. 1894.

Present and presiding the Honorable D. M. Key, judge, &c.

The following proceedings were had, to wit:

SATURDAY MORNING, *February 10th*, 1894.

Court met pursuant to adjournment.

Present and presiding the Honorable D. M. Key, &c.

V. K. STEVENSON ET AL.
vs.
TIP LOVINGOOD ET AL.
} Number 864.

In this cause an alias writ of possession is awarded to put plaintiffs in full possession of the land described in the declaration and the judgment and a writ of execution for costs paid by plaintiffs under order of July term, 1893, as well as costs previously adjudged against defendants will be issued on application of the plaintiffs.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

V. K. STEVENSON, M. C. ALLOWAY, N. E. ALLOWAY, HUGH Stevenson, Hugh Stevenson, Next Friend; Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, Jr.; Anna L. Stevenson, Paul E. Stevenson, and Geo. P. Wetmore

vs.

TIP LOVINGOOD, KI WOODY, COLUMBUS HOSS, JASPER FAIN, and Wm. M. Marr and Wm. M. Nixon.

Know all men by these presents, that we, the said plaintiffs,
221 V. K. Stevenson, M. C. Alloway, N. E. Alloway, Hugh Stevenson, Hugh Stevenson, next friend; Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, Jr., Anna L. Stevenson, Paul E. Stevenson and Geo. P. Wetmore, and Charles Seymour, security, are held and firmly bound unto said defendants, Tip Lovingood, Ki Woody, Columbus Hoss, Jasper Fain, Wm. M. Marr and W. M. Nixon in the penal sum of two hundred and fifty dollars, to the payment whereof, we bind ourselves and each of us, and each and every of our several heirs, executors and administrators, jointly and severally, firmly by these presents.

Witness our hands on this the 13th day of July, 1889.

The condition of this bond is such that the said V. K. Stevenson, M. C. Alloway, N. C. Alloway, Hugh Stevenson, Hugh Stevenson, next friend; Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, Paul E. Stevenson, Anna L. Stevenson, Jr., and Geo. P. Wetmore, commenced suit against Tip Lovingood, Ki Woody, Columbus Hoss, Jasper Fain, Wm. M. Marr and Wm. M. Nixon, in ejectment.

Now, if the said V. K. Stevenson, M. C. Alloway, N. E. Alloway, Hugh Stevenson, Hugh Stevenson, next friend; Eloise Stevenson, Maxwell Stevenson, Anna L. Stevenson, Anna L. Stevenson, Jr., Paul E. Stevenson and Geo. P. Wetmore, shall prosecute said suit with effect or on failure thereof pay and satisfy all costs that may be adjudged against said plaintiffs in said cause, or on failure of said defendants, if convicted, to pay and satisfy said costs if the said plaintiffs shall pay the same, then this bond to be void, otherwise to remain in full force and virtue.

Attest:

V. K. STEVENSON. [SEAL.]
MATILDA C. ALLOWAY.
N. E. ALLOWAY. [SEAL.]
HUGH STEVENSON.
HUGH STEVENSON,
Next Friend. [SEAL.]
PAUL E. STEVENSON.
ELOISE STEVENSON.
MAXWELL STEVENSON.
ANNA L. STEVENSON, JR.
ANNA L. STEVENSON.
GEO. PEABODY WETMORE.
By CHARLES SEYMOUR, *Att'y.*
CHARLES SEYMOUR. [SEAL.]

Filed July 13, 1889.

H. H. TAYLOR,
U. S. Cir. Ct Clerk.

222 VERNON K. STEVENSON ET AL.
vs.
TIP LOVINGOOD, KI WOODY, COLUMBUS HOSS, & JASPER FAIN. } No. 864.

Clerk's Fees.

Filing bill and entering rule for appearance	25
Acknowledgments at 25c. each & filing, 10c	35
Issuing 2 subpœnas, each 1.00	2 00
Filing same and entering returns, each .25	50
Copying 7 subpœnas, 21 folios, each folio, .10	2 10
Copying 5 bills, 125 folios, each folio .10	12 50
Filing 1 disclaimer	10
Entering orders and decrees, 14 folios, each folio .15	2 10
Entering 2 continuances, each .15	30
Dockets, indexes, etc	1 00
Record 39 folios, each folio .15	5 85
Filing 1 cost bill	10
Certificate and seal to 12 copies, .35	4 20
2 certified copies of order of court, .75	1 50
Total clerk's fees	32 85

Damages and Costs.

Clerk's fees	$32 85
Marshal's fees, U. S. Mar. Tyre Glenn, 2.48; Wesley Giles, $19.42; C. T. Duff, $10.72	32 62
Docket fee, Chas. Seymour & Lucky & Stanford	5 00
Total	$70 47

(Endorsed:) Chancery cost bill. Filed Dec. 12, 1892. H. H. Taylor, clerk. By J. T. Carter, dep. clerk.

The President of the United States of America to the marshal of the eastern district of Tennessee, Greeting:

Whereas, on the 11th day of August, 1892, in the circuit court of the United States for said district at Knoxville, in certain cause therein pending, wherein Vernon Stevenson, Matilda C. Alloway, Nathaniel E. Alloway, Hugh Stevenson, Paul E. Stevenson, Maxwell Stevenson, Anna L. Stevenson, and George Peabody
223 Wetmore were complainants, and Tip Lovingood, Ki Woody, Columbus Hoss, Jasper Fain, Wm. M. Marr, and Wm. M.

Nixon, defendants, it was ordered and decreed that a writ of possession issue to put the above named complainants into possession of a certain tract or parcel of land, to wit:

In fractional township 2, range 7, east, Ocoee district. Section 5, section 6, section 7, section 8, section 9, section 16, section 17, section 18, section 19, section 20, section 21, section 28, section 29, section 30, section 31, section 32.

You are, therefore, commanded to take with you the force of the district, if necessary, and cause the said Vernon K. Stevenson and others to have possession of said property. And return to said court at a court to be held at Knoxville, on the 2nd Monday of September next, how you have executed this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Knoxville, in the said district, the 21st day of April, in the year of our Lord, 1899, and of our Independence the 123rd.

HENRY O. EWING, *Clerk.*
By J. T. CARTER,
Deputy Clerk.

[The Seal of the Circuit Court. District of East Tennessee.]

UNITED STATES OF AMERICA, }
Eastern District of Tennessee. }

I, Henry O. Ewing, clerk of the circuit court of the United States for the eastern district of Tennessee, do hereby certify that the foregoing is a full, true and correct transcript of the record and proceedings had in said court in the cause of Vernon K. Stevenson, *et al.*, *vs.* Tip Lovingood, *et al.* (except the alias writ of possession issued 21st April, 1899, and return thereon, which are not found in my office), as the same appear of record and on file in my office. Witness my hand and the seal of said court at office in Knoxville, Tennessee, this 23 day of March, A. D. 1901.

[SEAL.]

HENRY O. EWING, *Clerk,*
By J. T. CARTER,
Deputy Clerk.

Endorsed: Filed M'ch 25, 1901. J. T. Carter, deputy clerk.

224 *Transcript from State Court.*

Original Bill.

Filed January 16th, 1895. Vastine Stickley, C. & M.

To the Honorable T. M. McConnell, chancellor and, etc., holding the chancery court for Monroe county, at Madisonville, Tennessee:

GEORGE PEABODY WETMORE, of Rhode Island, and HUGH STEVENSON, Paul E. Stevenson, Eloise Stevenson Kernochan and Her Husband, James L. Kernochan; Matilda Stevenson Alloway, Maxwell Stevenson, Who is a Minor and Sues by Paul E. Stevenson, His Next Friend, All of New York,

vs.

JACK STILES, ED (ALECK) HARE, and GEORGE BURCHFIELD, All Residents of Monroe County, Tennessee.

Complainants respectfully show to the court that they are the owners in fee by direct chain of title from the original grantee from the State of Tennessee, on entry made in the year 1842, of the fol*ol*wing described land, to wit:

First. On the waters of Tellico river, bounded by the divide between the waters of the Tellico river and on the south and the east the waters of Beaver Dam, Hanging Dog and Snowbird creeks, on the north the waters of Citico creek, and bounded on the west by the Ocoee district line, further described as follows:

Second. In fractional township 1, south range 6 east, section 29, section 30. section 31, section 32, section 33, section 34, and section 35.

Third. In fractional township 2 south, range 6 east, section 6, all of section 7, except the northeast quarter, section 18, section 19, section 29, section 30, section 31 and section 32.

Fourth. In fractional township 3 south, range 6 east, west half of section 5, section 6, section 7, and section 8.

Fifth. In fractional township 3, north range 5 east, section 1 and section 2, south half of section 3, east half of section 4, east half of section 9, and section 10, section 11, section 12, section 13,
225 section 14, section 15, section 21, section 22, section 23, section 24, section 25, section 26, section 27, and section 34, and section 36.

Complainants respectfully show unto your honor that they had a tenant occupying portions of said land, and that by some wrongful collusion with the tenant or wantonly and unlawfully the three defendants above named went on said land, and are now holding the same under some sort of occupation, either by means of cabins built for timber camps or other purposes and are preparing and intending to cut and waste timber on said lands, and that they are unlawfully holding possession and occupying the same.

Complainants show that the value of the lands depends, so far as is known, in the timber upon it, and that if defendants are allowed to go on cutting timber upon it, whether it be for fencing for mountain fields, which are not worth cultivating more than two or three years, or for shipping tanbark or attempting to get off during the winter storms by floating some of the logs thus injuring complainants' lands, the loss to complainant- would be irreparable and without hope of the slightest redress. Complainants are informed that said defendants are absolutely execution proof; that they have no property from which redress for the injury could be obtained, and that defendants are preparing to camp out in the mountain, intending and preparing to commit irreparable injury to the land.

The premises considered, complainants pray:

1st. That by due process the said defendants be required to appear and answer this bill, but not under oath, which is expressly waived.

2nd. That whatever claims of any description said defendants, or any of them, may set up to said land, be declared null and void, and the title to said lands adjudicated, and all adverse claims forever canceled as clouds on the title of complainants and the injunction herein prayed be made perpetual.

3rd. That writ of possession be issued and all such other process as may be necessary to give complainants immediate possession and full protection in the peaceable enjoyment of their lands.

That in the meantime writ of injunction be granted, strictly inhibiting and enjoining the said defendants, and each of them, from cutting any trees or in any way injuring any timber whatever on said property, or attempting to change the nature of land by clearing or interfering in any manner with the use of said land by complainants.

226 And complainants pray for such further, other and general relief as their circumstances may require, and shall to the court seem meet.

This is the first application for writ of injunction in this cause. And your orators will ever pray.

CHARLES SEYMOUR, *Solicitor.*

STATE OF TENNESSEE, }
County of Knox. }

Personally appeared before me, a notary public in and for said county, Charles Seymour, and who having been duly sworn, declared on oath that he is the solicitor of the complainants in the foregoing bill, and that the statements therein made are true to the best of his knowledge, information and belief.

CHARLES SEYMOUR.

Sworn to and subscribed before me this 15th day of January, A. D. 1895.

Witness my hand and official seal on said date.

WM. KNABE,

[SEAL.] *Notary Public, Knox County, Tennessee.*

To the clerk and master of the chancery court at Madisonville:

Issue a writ of injunction as prayed in the foregoing bill on complainants giving bond and security in the sum of five hundred dollars, conditioned as required by law.

JOS. W. SNEAD, *Judge.*

This January 15th, 1895.

STATE OF TENNESSEE:

Chancery Court at Madisonville.

Know all men *of* these presents, that we, George Peabody Wetmore, Hugh Stevens, Paul E. Stevens, Eloise Steven Kernochan, James L. Kernochan, Matilda Stevenson Alloway, principals, and Charles Seymour, surety, are held and firmly bound unto Jack Stiles, Ed (Aleck) Hare and George Burchfield, in the penal sum of two hundred and fifty dollars, to be void on condition that complainants prosecute and effect a suit which they are about to commence in said court against Jack Stiles, Ed (Aleck) Hare
227 and George Burchfield, or pay all costs and damages, incident on failure thereof, or which may be adjudged against us.

GEORGE PEABODY WETMORE.
HUGH STEVENSON.
PAUL E. STEVENSON.
M. C. ALLOWAY.
JAMES L. KERNOCHAN.
ELOISE S. KERNOCHAN,
By CHARLES SEYMOUR, *Att'y.*
CHARLES SEYMOUR.

Injunction Bond.

Chancery Court at Madisonville.

Know all men by these presents, that we, George Peabody Wetmore, Hugh Stevenson, Paul E. Stevenson, Matilda C. Alloway, James L. Kernochan, Eloise S. Kernochan, are held and firmly bound unto Jack Stiles, Ed (Aleck) Hare, George Burchfield, the defendants, in the penal sum of five hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our, and each of our heirs, executors and administrators, jointly and severally.

Witness our hands and seals, this — day of January, 1895.

The condition of the above obligation is such, that whereas, the above bound G. P. Wetmore and Stevenson heir, hath filed this day in the chancery court for Monroe county, an original and injunction bill and hath obtained from the Honorable Jos. W. Sneed, one of the judges of the circuit courts for the State of Tennessee, a fiat for

a writ of injunction. Now, if the said G. P. Wetmore and Stevenson heir shall prosecute said bill for possession to clear title and for injunction with effect, or in case they shall fail therein, or the same be dismissed shall abide by, perform and fulfill the judgment or decree of said court and pay all costs and damages that may be sustained from wrongfully suing out said writ of injunction, then the above obligation to be void, otherwise to remain in full force and effect.

GEORGE PEABODY WETMORE.
HUGH STEVENSON.
M. C. ALLOWAY.
PAUL E. STEVENSON.
JAMES L. KERNOCHAN.
ELOISE S. KERNOCHAN,
By CHARLES SEYMOUR, *Att'y.*
CHARLES SEYMOUR.

228 MONDAY, *June 3rd*, 1895.

STATE OF TENNESSEE:

Be it remembered, that at a regular term of the chancery court for Monroe county, begun and held at the court house in Madisonville, Tennessee, on the first Monday in June, 1895, present and presiding Hon. T. M. McConnell, chancellor for the third chancery division, the following proceedings were had:

GEORGE P. WETMORE ET AL.
vs.
JACK STILES ET AL.

In this cause, it appearing that the defendant-, Jack Stiles, Ed (Aleck) Hare and George Burchfield, have been duly served with process more than five days before the present term, and that said defendants have failed to make defense to said bill, it is ordered by the court that judgment *pro confesso* be and the same is hereby taken and the cause as to them set for hearing *ex parte.*

And thereupon this cause came on to be heard on this 6th day of June, 1895, upon the original bill and judgment *pro confesso*, from all of which it appears that complainants are the owners in fee of all the lands on waters of the Tellico river, bounded by the divide between the waters of Tellico river, and on the south and east by Hanging Dog, Beaver Dam and Snow Bird creeks, on the north by the waters of Citico creek and on west by Ocoee district line, being all lands in 7th range east, Ocoee district, except section 31; also sections 29, 30, 31, 32, 33, 34, 35, 1st fract. township, south range east Ocoee district; also sections 6, all of section 7, except northeast quarter, sections 18, 19, 29, 30, 31, 32, 2nd fract. township south range 6 east, Ocoee district.

Also west ½ section 5, sections 6, 7, 8, 3rd fract. township, south range 6 east Ocoee district.

Also section- 1–2 south ½ section 3, east ½ section 4, east ½ section 9, sections 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 34, 36, 3rd fract. township, north range 5 east Ocoee district.

And it appearing that the defendants have wrongfully and without authority trespassed upon said lands by erecting cabins, clearing land and cutting and destroying valuable timber, and that they are now trespassing thereon: It is therefore ordered, adjudged
229 and decreed that complainant have and recover of the defendants the lands above described, and the possession of the same, and to that end that a writ of possession of same and the injunction heretofore granted in the cause, enjoining defendants from trespassing on said land by cutting timber, clearing land or interfering with the use of said land by complainants be made perpetual.

Respondents will pay the cost of the cause in the first instance with judgment over against compl'ts for the costs of the cause, and execution awarded in the event execution against defendants is returned *nulla bona.*

STATE OF TENNESSEE. }
Monroe County. }

I, Vastine Stickley, clerk and master of the chancery court for Monroe county, Tennessee, certify that the foregoing is a full and perfect copy of the final decree in the above styled cause, made at the June term, 1895, and entered of record No. 3, page 165.

Given under my hand and seal of court, this Sept. 10th, 1895.

VASTINE STICKLEY, *C. & M.*

Subpœna to Answer.

STATE OF TENNESSEE:

Chancery Court at Madisonville.

To the sheriff of Monroe county, Greeting:

Summon Jack Stiles, Ed (Aleck) Hare and George Burchfield, to appear on the first Monday of June next, before the chancery court at Madisonville, to answer the bill of George P. Wetmore and others, filed against Jack Stiles and others in said court; and have you then and there this writ.

Witness Vastine Stickley, clerk and master of our said court at ffice in Madisonville, the 16th day of Jan., 1895.

VASTINE STICKLEY,
Clerk and Mast.

Endorsed: Executed by reading copy of original bill to each of the defendants, and left copy of bill with George Burchfield and summoning them to appear as commanded. This March 29th, 1895. $3.00 J. H. Melton, dep'ty sheriff.

230 *Injunction.*

State of Tennessee to Jack Stiles, Ed (Aleck) Hare, and George Burchfield and to their counselors, attorneys, solicitors, and agents and each and every one of them, Greeting:

Whereas, in a certain suit this day instituted in our court of chancery at Madisonville, by George P. Wetmore and others, complainants, against Jack Stiles, Ed (Aleck) Hare and George Burchfield, defendants, complainants having obtained from the Hon. Jos. W. Sneed, judge, *and* etc., a fiat for a writ of injunction to issue to enjoin said defendants and each of them from cutting any trees, or in any way injuring any timber whatever on said land or property or attempting to change the nature of land by clearing or interfering in any manner with the use of said land by complainants.

And complainants having executed the bond required by said fiat, we therefore, in consideration of the premises aforesaid, do strictly enjoin and command you, the said Jack Stiles, Ed (Aleck) Hare and George Burchfield, and all and every persons before mentioned, under the penalty prescribed by law, of you and every of your goods, lands and tenements to be levied on to our use, that you and every of you do absolutely desist from cutting any trees, or in any way injuring any timber, whatever, on said property, or attempting to change the nature of land by clearing or interfering in any manner with the use of said land until the hearing of this cause in our said court of chancery.

Witness, Vastine Stickley, clerk and master of our said court, at office, the first Monday in Dec'r, in the year of our Lord one thousand eight hundred and ninety-five, and in the — year of our Independence.

VASTINE STICKLEY, *C. & M.*

Endorsed: Came to hand Jan'y 21st, 1895. Executed as commanded in full by reading the within injunction to each of the defendants. This March 29th, 1895. J. M. Melton, D. S. Cost $3.00.

STATE OF TENNESSEE, }
Monroe County. }

I, Vastine Stickley, clerk and master of the chancery court for Monroe county at Madisonville, Tennessee, do hereby certify that the foregoing is a full, true and perfect copy of the entire pro-
231 ceeding in the case of George Peabody Wetmore and others *vs.* Jack Stiles *et al.*, as appears of record in said court. Said cause being No. 1233 on the dockets of said court.

Given under my hand and the seal of said court at office in Madisonville, Tennessee, this the 16th day of March, 1901.

VASTINE STICKLEY,
Clerk and Master.

Bill — Cost.

C. & M. V. Stickley for transcript	$2 50
Certificate and seal	75
Postage	06
	$3 31

No. 1153. In the U. S. circuit court at Knoxville. Hugh Stevenson *et al.* against Wm. Fain *et al.* Certified copy of transcript from State court. Filed March 25th, 1901. J. T. Carter, deputy clerk.

HUGH STEVENSON, MATILDA C. ALLOWAY, Paul E. Stevenson, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Husband, James L. Kernochan, and George P. Wetmore

vs.

WILLIAM FAIN, JOHN FAIN, ROBERT FAIN, Jasper Fain, Allen Fain, Florence Hosshaw and Her Husband, Abraham Hosshaw.

} In Equity. No. 1153.

Deposition of Edward Henegar, of Knoxville, Tennessee, on Behalf of Complainants.

Q. 1. State your relationship to F. W. Lea, formerly of Cleveland, Tennessee.

A. I am a nephew of F. W. Lea, formerly of Cleveland, Tennessee.

Q. 2. State whether said F. W. Lea is dead and what heirs at law he left.

A. F. W. Lea died several years ago, and at the time of his death his heirs at law were John M. Lea, of Nashville, Tenn.; Mrs. M. L. Henegar, wife of H. B. Henegar, of Charleston, Tenn.; Mrs.
232 Lavinia Earnest, of Knoxville, Tenn.; Mrs. S. J. Callaway, of Monroe county, Tenn.; Emily Lea Clark, wife of R. A. Clark, formerly of Jackson, Tenn.; and only child of J. A. Lea (brother of F. W. Lea), and Ann Barnard, another sister, who since died and left her husband, James Barnard, and the following children: Luke Lea, Lavenia L., Arabella, Louisa H. Gere (a widow), Susan W. Hastings, wife of A. H. Hastings, W. D. W. Barnard and Eaton Barnard.

Q. 3. This is a suit in which the title cast by descent from F. W. Lea is in issue under deed from Jno. M. Lea and Mrs. Henegar, Mrs. Callaway, Mrs. Earnest, H. B. Henegar, R. A. Clarke, Emily Lea Clarke, James Barnard, Lavinia L. Barnard, Arabella

Barnard, Louisa H. Gere, Luke Lea Barnard, W. D. W. Barnard, Susan W. Hastings, A. H. Hastings and Eaton Barnard to E. Henegar, claimed to be the heirs of F. W. Lea, and to convey by deed certain lands in Polk and Monroe counties, Tennessee. State any fact within your knowledge affecting either parties, or the contrary in any way.

A. The persons named in answer to number 2 had all the title that descended from F. W. Lea at the time they transferred his property to me.

EDWARD HENEGAR.

Sworn and subscribed to before me this 15th day of March, A. D. 1901.

[SEAL.] NORMAN B. MORRELL,
Notary Public.

Bill of Cost.

M. B. Morrell, notary public, taking depositions	$1 00
Edward Henegar, witness, 1 day	1 00
Total	$2 00

NORMAN B. MORRELL,
Notary Public.

Endorsed: In the United States circuit court at Knoxville. Hugh Stephenson *et al. vs.* Wm. Fain *et al.* Affidavit of E. Henegar. Filed March 25th, 1901. J. T. Carter, deputy clerk.

HUGH STEVENSON ET AL.
vs.
WILLIAM FAIN ET AL. } In Equity. No. 1153.

233 Charles Seymour, having been duly sworn, deposes that he files herewith the following described original title papers, certified copies of which were by agreement filed as exhibits to the deposition of W. D. Hale, taken on the 7th day of December, 1900, in this cause.

Schedule.

Deed, F. W. Lea to Wm. W. Wetmore, registered Monroe Co., O 257.

Deed, Moses W. Wetmore to W. S. Wetmore, registered Monroe Co., O 428.

Deed, Moses W. Wetmore to W. S. Wetmore, registered Monroe Co., O 454.

Deed, Blackburn heirs to G. P. Wetmore, registered Monroe Co., No. 3 495.

Deed, E. Henegar to G. P. Wetmore, dated 10 Dec., 1894, registered Monroe Co., No. 5 271.

Power att'y, L. L. Barnard to James Barnard, registered Monroe Co., Book 6, p. 339.

Deed, Jno. M. Lea to E. Henegar, registered Monroe Co., Book 5, p. 254.

Deed, S. J. Callaway *et al.* to G. P. Wetmore, registered Monroe Co., Book 5, p. 250.

The within leases of complainants to Hammonds were last seen by affiant in preparation of *habeas corpus* suit about two years ago, and after diligent search cannot now be found.

And he further states that he has been for thirty years the solicitor and agent for the complainants, and has had charge of their title papers, and so far as he is aware has had the custody of all title papers, and that the above described originals filed herewith are all of the original title papers in the possession or control of the complainants and all that they can furnish at the present time, and that they depend on the certified copies from the records for the support of their title except as herein shown.

CHARLES SEYMOUR.

Sworn to and subscribed before me on this the 15th day of March, A. D. 1901.

[SEAL] NORMAN B. MORRELL,
Notary Public.

Endorsed: No. 1153. In the United States circuit court, at Knoxville. Hugh Stevenson *et al. vs.* Wm. Fain *et al.* Affidavit of Chas. Seymour. Filed March 25th, 1901. J. T. Carter, deputy clerk.

234 U. S. Circuit Court, at Knoxville.

HUGH STEVENSON ET AL.
vs.
WILLIAM FAIN ET AL. } In Equity. No. 1153.

Deposition of John S. Blackburn, of Cleveland, Tenn., for Complainants.

Said J. S. BLACKBURN, having been duly sworn, deposed as follows:

I am a son of John Blackburn to whom grants No. 7660 and No. 7661 and other grants issued from the State of Tennessee in the Ocoee district.

My father died about 20 years ago intestate, and left the following children: John S. Blackburn, J. O. Blackburn and Robert Blackburn—three sons and three daughters, one, Margaret T., who married J. L. Still; another, Laura L., who married G. W. Hargis, and the other, Lydia E., who married R. R. Ramsey, and these were the only heirs at law that he left, and all of said heirs and the husbands

of the daughters joined in and executed conveyance to George Peabody Wetmore, dated 21st March, 1894, for said grants, and release of some other lands.

JOHN S. BLACKBURN.

Sworn to and subscribed before me on this the 16 day of March, A. D. 1901.

NORMAN B. MORRELL,
Notary Public.

[SEAL.]

Bill of Costs.

N. B. Morrell, notary public, taking 1 deposition	$1.00
J. S. Blackburn, witness, 1 day	1.00
	$2.00

NORMAN B. MORRELL,
Notary Public.

Costs paid by complainants.

NORMAN B. MORRELL,
Notary Public.

Endorsed: In the United States circuit court, at Knoxville. Hugh Stevenson *et al. vs.* Wm. Fain *et al.* Affidavit of J. S. Blackburn. Filed March 25th, 1901. J. T. Carter, deputy clerk.

235 *Power of Attorney.*

Luke Lea Barnard
to
James Bernard.

(Endorsed:) Filed Mar. 25, 1901. J. T. Carter, deputy clerk.

Know all men by these presents, that I, Luke Lea Barnard, of the city of St. Louis and State of Missouri, have made, constituted and appointed, and by these presents do make, constitute and appoint James Barnard, of the county of Madison and State of Illinois, my true and lawful attorney for me and in my name, place and stead, and as my act and deed to sell, convey and transfer any and all my lands and interests in lands situated in any and all parts of the State of Tennessee, upon such terms, as to price, payment of purchase money and otherwise, as to my said attorney may seem fit and proper, and to make any and all contracts and agreements, of any and all kinds and descriptions relating to or in any way concerning said lands or interests therein, that he may see fit and proper to make, and, generally, to do any and all things, whatsoever, relating to or in any way growing out of said lands or my interest therein

which he may see fit and proper, hereby ratifying and confirming all that my said attorney may do in the premises.

In witness whereof, I have hereunto set my hand and seal this 15th day of July, A. D. 1891.

(Signed) LUKE LEA BARNARD. [SEAL.]

STATE OF MISSOURI, } ss:
City of St. Louis, }

Before me, a notary public, duly appointed, commissioned and qualified in and for the — and State aforesaid, personally appeared Luke Lea Barnard, the within named bargainor, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

In testimony whereof, I have hereunto set my hand and notarial seal at my office in the city of St. Louis, on this 23rd day of Sept., A. D. 1891.

[Notary Public Seal.]

BYRON SHARP.

My commission expires Nov. 23rd, 1893.

STATE OF TENNESSEE, }
Monroe County. }

I, Thos. McClellan, register for said county, hereby certify
236 that the within power of attorney and certificate thereunto attached, were filed in my office on the 9 day of November, 1899, and noted in Note Book No. C, page 32. Recorded in Book No. S, page 339.

This 10th day of November, 1899.

THOS. McCLELLAN, *Register.*

STATE OF TENN., }
Polk County. }

NOVEMBER 16TH, 1899, at 12.00 o'clock m.

Then was the foregoing instrument noted in Note Book No. 1, page 38, and recorded in Registration Book Record No. 3, pages 509-10.

E. L. AMBURN, *Register,*
By A. E. LOVE, *Dep. Reg.*

Conveyance.

E. Henegar and wife to Geo. P. Wetmore. } Dated 10 Dec., 1894.

(Endorsed:) Filed Mar. 25, 1901. J. T. Carter, deputy clerk.

Know all men by these presents, that in consideration of twenty-four hundred dollars, of which fifteen hundred dollars ($1500.00) is in hand paid and a note of Charles Seymour for nine hundred dollars ($900.00), with interest from this date, due one year after date, drawn to the order of Edward Henegar, and secured by a vendor's lien which is expressly declared and specifically retained upon the property hereby conveyed, I, Edward Henegar, of Knoxville, Tennessee, have sold, and do hereby grant and convey to George Peabody Wetmore, of Rhode Island, the following described property, to wit:

All the estate and land of which William Park Lea died seized, and also all the estate and lands of which Francis W. Lea died seized, situated in the county of Polk, in the State of Tennessee, being the same lands conveyed to me by a deed of Susan J. Calloway, Lavinia Ernest, Margaret L. Henegar and husband, H. B. Henegar, Emily Lea Clark and husband, R. A. Clarke, James Barnard, Lavinia L. Barnard, Arabama Barnard, Louise H. Gery, Luke Lea Barnard, D. W. D. Barnard, A. H. Hastings, Susan W. Hastings and Eaton Barnard, bearing date 5th of July, 1891, by deed of John M. Lea, dated 15th of October, 1891, including
237 and hereby conveying all the lands in said Polk county, of which said William Park Lea or F. W. Lea died the owners of, including specifically:

In fractional township two, south range two east the northeast quarter of section fourteen (14) one hundred and sixty acres.

In fractional township two, north range three east the north fractional half of section five, one hundred and thirty-four (134) acres.

The north fractional half and the southwest fractional quarter of section eighteen, one hundred and eighty (180) acres.

The east half of the southwest quarter of section twenty-seven (27) eighty (80) acres.

The northeast quarter and the east half of the northwest quarter and the north half of the southeast quarter of section thirty-four (34), three hundred and twenty (320) acres.

The south half and the northeast forty (40) acres of the southwest quarter of section thirty-six (36), one hundred and twenty (120) acres.

In township one (1), range three (3) east; the southeast quarter of section thirteen (13), one hundred and sixty (160) acres.

The east half of the southwest quarter of section thirty (30), eighty (80) acres.

The north half and the southwest forty (40) acres of the southeast quarter of section thirty-two (32), one hundred and twenty acres.

In fractional township two (2), south range four (4) east the southeast quarter of section seventeen (17), one hundred and sixty (160) acres.

The southeast quarter of section nineteen (19), one hundred and sixty (160) acres.

The northeast quarter and the southwest quarter of section thirty (30) three hundred and twenty (320) acres.

The northeast quarter of section twenty-two (22), one hundred and sixty (160) acres.

In fractional township one (1), south range three (3) east the southeast fractional quarter of section thirteen (13), fifty-eight (58) acres.

As well as all other lands which descended to the heirs of said William Park Lea, and the heirs of said F. W. Lea, in said Polk county.

Also all the lands, interests in lands of which the late William Park Lea died seized, and also all the estate and lands of which the said Francis W. Lea died seized, situated in said county of
238 Monroe, State of Tennessee, being the same lands conveyed to me by deed of Susan J. Calloway, Lavinia Ernest, Margaret L. Henegar and husband, H. B. Henegar, Emily Lea Clarke and husband, R. A. Clarke, James Barnard, Lavinia L. Barnard, Arabella Barnard, Luke Lea Barnard, W. D. W. Barnard, A. H. Hastings, Susan Hastings, Louise H. Grey and Eaton Barnard, by deed dated 5th day of July, 1891, and by deed of John M. Lea, dated 15th day of October, 1891, hereby conveying all interest in lands of every description which descended to heirs of William Park Lea, and Francis W. Lea in said Monroe county, except the following:

The north half and the southwest quarter of section twelve (12) and the southeast quarter of section fifteen (15) in fractional township two (2), south range six (6) east.

This conveyance is without warranty or liability on part of grantor.

And I, Mary M. Henegar, wife of Edward Henegar, join in this instrument and release all right and claim under homestead and dower laws to the said Wetmore.

In witness whereof, we, Edward Henegar and Mary M. Henegar, have hereunto set our hands and seals, on this the 10th day of December, 1894.

(Signed) EDWARD HENEGAR.
MARY M. HENEGAR.

Witness-:
M. D. ARNOLD.
F. W. PETWAY.

STATE OF TENNESSEE, }
Knox County. }

Personally appeared before me, Alex McMillan, a notary public of said county and State, Edward Henegar and Mary Henegar, the within named bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained, and Mary Henegar, wife of the said Edward Henegar, having appeared before me privately and apart from her husband, said Mary M. Henegar acknowledged the execution of the said deed to have been done by her freely, voluntarily and understandingly, without complusion and constraint from her said husband, and for the *the* purposes therein expressed.

Witness my hand and official seal at office in Knoxville, this 10th day of December, 1894.

[SEAL.] ALEX McMILLAN,
Notary Public.

My commission as notary public expires July 9th, 1898.

239 STATE OF TENNESSEE, }
Monroe County. }

I, Thos. McClellan, register for said county, hereby certify that the within deed and certificate thereunto attached, were filed in my office on the 9th day of November, 1899, and noted in Note Book No. C, page 32. Recorded in Deed Book No. 5, page- 271–274.

This 10th day of November, 1899.

(Signed) THOS. McCLELLAN, *Register.*

STATE OF TENN., }
Polk County. }

NOVEMBER 16TH, 1899, at 12:10 o'clock p. m.

Then was the foregoing deed of conveyance noted in Note Book No. 1, page 38, and recorded in Registration Record No. 3, pages 510 *et seq.*

E. L. AMBURN, *Register,*
By A. E. LOVE, *Dep. Reg.*

(Endorsed on back:) I hereby certify that the transfer tax on the within deed has been to me this day paid, this 9th day of Nov. 1899. (Signed) L. A. Hunt, county ct. clerk.

Deed of Blackburn heirs to Wetmore.

(Endorsed:) Filed Mar. 25, 1901. J. T. Carter, deputy clerk.

Know all men by these presents, that in consideration of one hundred and fifty dollars, to us in hand paid, and in settlement of conflicting titles, and for other considerations, receipt whereof is hereby acknowledged, we, John S. Blackburn, of Alabama, J. O. Blackburn and wife, E. C. Blackburn, J. Robert Blackburn, Mrs. J. L. Still and husband, J. L. Still, L. L. Hargis and husband, G. W. Hargis, L. E. Ramsey and her husband, R. R. Ramsey, of Bradley county, Tennessee, do hereby release and convey unto George Peabody Wetmore, of Newport, Rhode Island, the following described land, to wit:

All the lands in Polk and Monroe counties, Tennessee, entered by or granted to or conveyed to John Blackburn, formerly of Bradley county, Tennessee, which lie in the counties of Polk and Monroe in the State of Tennessee, in the third range east, and the ranges east of the third range east, of the Ocoee district.

240 This instrument is intended to be a release and conveyance of all the estate which descended to us by inheritance from said John Blackburn in said ranges.

As to the larger part of the title papers of the said John Blackburn, this is a release of younger grants issued to him on the older grants of said Wetmore, and as to sundry fractions, especially those described in grants 7660 and 7661, this is a conveyance, but without warranty on our part. Reference is hereby made to the said Ocoee district and county records for further description of the premises hereby conveyed.

Witness our hands and seals this 21 day of March, A. D. 1894.

(Signed)

J. S. BLACKBURN. [SEAL.]
J. O. BLACKBURN. [SEAL.]
E. C. BLACKBURN. [SEAL.]
J. R. BLACKBURN. [SEAL.]
M. T. STILL. [SEAL.]
J. L. STILL. [SEAL.]
L. L. HARGIS. [SEAL.]
G. W. HARGIS. [SEAL.]
L. E. RAMSEY. [SEAL.]
R. R. RAMSEY. [SEAL.]

STATE OF MISSISSIPPI, *County of Jones,* } ss:

Personally appeared before me, chancery clerk in and for said county, the within named bargainor, John S. Blackburn, with whom I am personally acquainted, and who acknowledged that he

executed the within instrument for the purposes therein contained.

Witness my hand and official seal at office in Ellisville, this 21 day of M'ch A. D. 1894.

[COURT SEAL.]

E. B. SHARP,
Chancery Clerk, Jones Co., Miss.

STATE OF MISSISSIPPI, }
County of Jones. }

I, W. T. Houston, judge of the chancery court of said Jones county, do hereby certify that said court is a court of record, having a seal, and that E. B. Sharp, whose genuine signature appears to the foregoing certificate of acknowledgement of deed of Blackburn *et al.* to G. P. Wetmore, is the clerk of said court, and that his acts as such are entitled to full credit, and I further certify that he is the custodian of the seal of said court affixed to said certificate.

241 Given in said Jones county this 26th day of April, 1894. Witness my hand.

W. T. HOUSTON,
Judge of Chancery Court.

THE STATE OF MISSISSIPPI, }
Jones County. }

Personally appeared before me, E. B. Sharp, chancery clerk in and for said county, State aforesaid, the within named G. W. Hargis, who acknowledged that he signed and delivered the foregoing instrument on the day and year therein mentioned.

Given under my hand and seal of office, this March 21, 1894.

[SEAL.]

E. B. SHARP,
Chancery Clerk.

STATE OF TENNESSEE, }
Bradley County. }

Personally appeared before me, Bascom Rogers, clerk of the county court for said county and State, J. O. Blackburn, J. R. Blackburn, J. L. Still and R. R. Ramsey, the within named bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained.

Witness my hand at office, in Cleveland, Tenn., this 28 day of March, 1894.

[SEAL.]

BASCOM ROGERS,
County Court Clerk.

STATE OF TENNESSEE, }
Bradley County. }

To W. D. Jones, Esq.:

You are hereby authorized and empowered to take the examination of Mrs. M. L. Still, S. E. Ramsey, Mrs. Emma Blackburn and

L. L. Hargis, separately and apart from their husband-, relative to the free execution of the annexed deed, and the same, so taken, to certify under your hand and seal.

Given under my hand at office, March 27, 1894.

[SEAL.] BASCOM ROGERS,
Clerk of the County Court of said County.

242 STATE OF TENNESSEE, }
Bradley County. }

E. C. Blackburn, wife of J. O. Blackburn; M. L. Still, wife J. L. Still; L. L. Hargis, wife of G. W. Hargis; L. E. Ramsey, wife of R. R. Ramsey, having personally appeared before me, and having by virtue of the authority in me vested, been examined privately and apart from their said husbands, and they having acknowledged the due execution of the annexed deed by them freely, voluntarily and understandingly, without compulsion or constraint by their said husbands, and for the purposes therein contained, the same is therefore certified.

Witness my hand and seal this March 28, 1894.

[SEAL.] W. D. JONES, *J. P.*

STATE OF TENNESSEE, }
Polk County. }

MAY 4TH, 1894, at 2:20 o'clock p. m.

Then was the foregoing instrument and certificates noted in Note Book A, page 302, and registered in the register's office in Benton, in Book "R," pages 361 to 363.

L. W. HILDEBRAND, *Register.*

STATE OF TENNESSEE, }
Monroe County. }

Received for record and noted in Note Book B, page 176, at 7:30 a. m., March 6th, 1897, and registered in Book No. 3, pages 495–6–7.

THOS. McCLELLAN, *Register.*

STATE OF TENN., }
Polk County. }

JUNE 11TH, 1900, at 12:00 o'clock m.

Then was the foregoing instrument and certificates noted in Note Book No. 1, page 42, and recorded in Registration Record No. 1, pages 286–7–8.

E. L. AMBURN, *Register,*
By A. E. LOVE, *Dep. R.*

Fee paid, $1.30.

Deed of John M. Lea
to
E. Henegar.

(Endorsed :) Filed Mar. 25, 1901. J. T. Carter, deputy clerk.

For the consideration of one dollar, I, John M. Lea, of Davidson county, Tennessee, do hereby sell and convey to Edward
243 Henegar, of Knox county, Tennessee, all my right, title and claim of, in and to a certain undivided interest coming to him as one of the heirs of his two deceased brothers, the late Francis W. Lea, and the late William P. Lea, said lands being situate in the Hiwassee district, and also in all that portion of the Ocoee district which lies outside of the county of Hamilton, and also in Blount county, State of Tennessee. The lands hereby conveyed are in many parcels and accurate descriptions of metes and bounds can not be given, but the lands intended to be conveyed as aforesaid lie in the counties of Bradley, Polk, Monroe and Blount *counties*, and, perhaps, in other portions of the Hiwassee and Ocoee districts, with the reservation as aforesaid, that no conveyance is made of any interest he possesses as heir of my brothers or in any individual right in any lands lying in the county of Hamilton. No title is warranted.

Witness my hand October 15", 1891.

(Signed) JOHN M. LEA.

STATE OF TENNESSEE,
Davidson County.

Personally appeared before me, E. K. Glenn, d'p'y clerk of the county court of said county, the within named John M. Lea, the bargainor with whom I am personally acquainted, and who acknowledged that he executed the annexed instrument for the purposes therein contained.

Witness my hand, at office, this 14 day of Oct., 1891.

E. K. GLENN,
D'p'y Clerk.

STATE OF TENNESSEE,
Monroe County.

I, Thos. McClellan, register for said county, hereby certify that the within deed and certificates thereunto attached were filed in my office on the 25 day of October, 1899, and noted in Note Book No. C, page 31, recorded in Deed Book No. 5, page 254.

This 26 day of October, 1899.

THOS. McCLELLAN, *Register.*

STATE OF TENNESSEE,
Polk County.

OCT. 28TH, 1899, at 12.10 o'clock p. m.

244 Then was the foregoing deed of conveyance noted in Note Book No. 1, page 38, and recorded in Registration Record No. 3, pages 490–1.

E. L. AMBURN, *Register*,
By A. E. LOVE, *Dep. Reg.*

Deed of F. W. Lea
to
Moses W. Wetmore.

(Endorsed:) Filed Mar. 25, 1901. J. T. Carter, deputy clerk.

This indenture made this the 30th day of January, one thousand eight hundred and fifty-one, between Francis W. Lea, of Bradley county, of the one part, and Moses W. Wetmore, of the county of Davidson, on the other part, both citizens of the State of Tennessee.

Witnesseth: That the said Lea, for the consideration of two thousand dollars, to him paid, hath this day bargained and sold, and by these presents doth convey to said Wetmore and his heirs and assigns certain tracts of land in Monroe county, Tenn., and in that part of said county which is included in the Ocoee district, and which lands are described on the map of said district, on file in the entry taker's office of said district, at Cleveland, Tenn., and described as follows:

"All the lands in fractional township 2 and range 7 east of the basis line in the Ocoee district, and granted in the register's office of said district by Nos. 5603, 5604, 5605, 5606, 5607, 5608, 5609, 5610, 5965, 5966, 5969, 5980, 5981, 5982, 5986, 6120, 6121, 6122, 6123, 6129, 6150, 6151, containing 7114 acres. Section 33, granted by No. 6136. Southeast and southwest quarters of sec. 34 by grant 6135. Northeast and northwest fractional quarters of section 34 by grant 5602, southwest quarter of section 35, by grant 5975, and east half of the southeast quarter of section 32, by grant 5977, which lands are in fractional township 1 north and range 6 east, &c., containing 1,433 acres. Section 3, section 5 and southeast quarter and northeast fractional quarter of section 6, by grants Nos. 6131, 6132 and 6135, which lands are in fractional township 2 north and range 6 east of the basis line in the Ocoee district, and contain 1600 acres. East half of the southwest, northwest, northeast and southeast quarters of section 7, by grant 5987. East half of the northwest and south half and northeast corner of the southwest quarter of section 18, by grant 6146. Northeast and southeast quarters of section 18, by grant 6145. Section 17 by
245 grant 6147. Section 30 by 6116. Section 32 by grant 6114. Section 29 by grant 6117. Section 31 by grant 6115, which

are in fractional township 1 south and range 6 east of the basis line in said district, containing 4280 acres. Section 6 by grant 6160, northwest, southwest and southeast quarters of section 7, by 6164; northeast, southeast and southwest quarters of section 18, by grant 6104. Section 19 by grant 6103, section 30 by grant 5993, and section 31 by grant 5992, which lands are in fractional township 2 south and range 6 east of the basis line in said district, containing 3520 acres. Section 6 by grant 6152. Northeast fractional and northwest quarter of section 7, by grant 6154. Northwest quarter and the southwest fractional quarter of section 6 by grant 6153, which are in fractional township 3 south and range 6 east of the basis line in said district and containing 1842 acres. Section 15, by grant 5932, section 22, by grant 5933, northeast by section 21, by grant 5924, northwest quarter of section 26 by grant 5967. Northwest quarter of section 35 by grant 5974, and northeast quarter of section 21 by grant 5924, which lands are in fractional township 3 north and range 5 east of the basis line in said district, 1760 A. Section 15, by grant 5985. Section 16 by 5952. Northeast and northwest quarters of section 22 by grant 5954. Southeast and southwest quarter- of section 29 by grant 5946, northeast quarter of section 21 by grant 5941. Southwest quarter of section 21 by grant 5589. Northeast, west half of the southeast and northwest quarters of section 10, grant 5939, section 28 by grant 5953, and 5584, southwest quarter of section 10 by grant 5947. East of the northeast quarter of section 29 by grant 5588, southeast quarter of section 8 by 5943, and southeast quarter of section 17 by grant 5473, which lands are in fractional 1 north and range 4 east of the basis line in said district, containing 4400 acres. Which in the aggregate contain twenty-five thousand two hundred and forty-nine acres. Having a full and perfect right to convey said lands, they being free from any incumbrance whatever, and will forever warrant and defend the title as an indefeasible inheritance in fee simple to said Wetmore, his heirs and assigns forever.

In testimony of which, I, Francis W. Lea, set my hand and seal the day and date before written.

[SEAL.] (Signed) FRANCIS W. LEA.

246 STATE OF TENNESSEE, }
Davidson County. }

Personally appeared before me, F. R. Cheatham, clerk of the county court of said county, the above named Francis W. Lea, the bargainor, with whom I am personally acquainted, and who acknowledged that he executed the above deed for the purposes therein contained.

Witness my hand at office, this 30th day of January, 1851.

F. R. CHEATHAM, *Clerk.*
By L. P. CHEATHAM, *D. C.*

STATE OF TENNESSEE,
Monroe County.

FEBRUARY 19TH, at 5 o'clock p. m., 1851.

Then was the foregoing deed and clerk's certificate rec'd for registration and noted in my office in Note Book A, page 46, and registered in Book O, pages 257 and 258.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

Reg. fee, $21.75.

Deed of Susan Callaway *et al.*
to
E. Henegar.

(Endorsed:) Filed Mar. 25, 1901. J. T. Carter, deputy clerk.

Know all men by these presents, that, whereas, the late Francis W. Lea, died owning lands situate in the counties of Monroe, Polk, Bradley, James, Hamilton and Marion *counties* in the State of Tennessee, and, whereas, the late William P. Lea died owning lands situate in the counties aforesaid, and, whereas, to all said lands, those owned by the said Francis W. Lea as well as those owned by the said William P. Lea, the undersigned have claims as heirs of the said deceased parties, that is to say, the undersigned Susan J. Callaway, Lavinia Earnest and Margaret L. Henegar, inherited as sisters of the said deceased and the other undersigned inherit as heirs of their deceased mother, the late Mrs. Ann Elizabeth Barnard, who was a sister of both *of* said Francis W. Lea and said William P. Lea, also the other undersigned, Emily Lea Clarke, who is interested as the heir of her deceased father, the late Jas. A. Lea, who was a brother both of said Francis W. and Wm. P. Lea, now, for the consideration of one dollar, the undersigned hereby convey, sell, transfer
247 unto Edward Henegar, of the county of Knox, State aforesaid, all their right, title and claim of, in and to the aforesaid lands, situate in aforesaid counties, inherited as aforesaid, by them as heirs of the said Francis W. Lea and William P. Lea, the books of the register's offices in the said several offices and also the public records in the offices of the entry taker and register of the Hiwassee and Ocoee districts, being referred to for description of the various tracts of land conveyed by this instrument, it being the intent to clothe the said Henegar with the legal title to all the lands situate

in the counties aforesaid to which the undersigned have title as the heirs of the said Francis W. and William P. Lea.

Witness our hands, July 15, 1891.

(Signed) H. B. HENEGAR.
M. L. HENEGAR.
LAVINIA EARNEST.
MRS. S. J. CALLAWAY.
R. A. CLARKE.
EMILY LEA CLARKE.
JAMES BARNARD.
LAVINIA L. BARNARD.
ARABELLA BARNARD.
LOUISA H. GERE.
LUKE LEA BARNARD,
By JAMES BARNARD,
His Att'y in Fact.
W. D. W. BARNARD.
A. H. HASTINGS.
SUSAN W. HASTINGS.
EATON BARNARD.

STATE OF ILLINOIS, }
County of Madison. }

Before me, C. W. Leverett, a notary public, duly appointed, commissioned and qualified in and for the county and State aforesaid, personally appeared James Barnard, Lavinia L. Barnard, Arabella Barnard, Louisa H. Gere, Wm. D. W. Barnard and Eaton Barnard, the said James Barnard, a widower, the said Louisa H. Gere, a widow, the rest single, 6 of the within named bargainors, with whom I am personally acquainted and who acknowledged that they executed the within instrument for the purposes therein contained.

In testimony whereof, I have hereunto set my hand and
248 notarial seal at office in the village of Upper Alton, Illinois, on this the 18th day of September, 1891.

[NOTARIAL SEAL.] C. W. LEVERETT,
Notary Public.

STATE OF ILLINOIS, }
County of Madison. }

Before me, C. W. Leverett, a notary public, duly appointed, commissioned and qualified in and for the county and State aforesaid, — Susan W. Hastings and Albert H. Hastings, her husband, (2) two of the within named bargainors, with whom I am personally acquainted and who acknowledged that they executed the within instrument for the purposes therein contained.

And Susan W. Hastings, wife of the said Albert H. Hastings, having appeared before me privately and apart from her husband, the said Albert H. Hastings, acknowledged the execution of said deed to have been done by her freely, voluntarily and understandingly,

without compulsion or constraint from her said husband, and for the purpose therein contained.

In testimony whereof, I have hereunto set my hand and notarial seal at office in the village of Upper Alton, Illinois, on this the 19th day of September, 1891.

[NOTARIAL SEAL.] C. W. LEVERETT,
Notary Public.

STATE OF TENNESSEE, }
Bradley County. }

Personally appeared before me, the undersigned authority, H. B. Henegar and wife, Margaret L. Henegar, two of the bargainors in the foregoing deed and contract, with whom I am personally acquainted, and acknowledged that they executed the same for the purpose therein expressed, and Margaret L. Henegar, wife of the said H. B. Henegar, having appeared before me privately and apart from her said husband, acknowledged that she executed the foregoing deed and contract freely, voluntarily and understandingly, without compulsion or constraint from her husband and for the purpose therein expressed. The same is therefore certified.

Witness my hand and official seal this the 8th day of August, 1891.

[NOTARIAL SEAL.] A. A. PIERCE,
Notary Public.

249 STATE OF TENN., }
County of Knox, } *ss:*

Personally appeared before me, Alex. McMillan, notary public in and for said county, the within named bargainor, Lavinia Earnest (a widow lady), with whom I am personally acquainted, and who acknowledged that she executed the within instrument for the purposes therein contained.

Witness my hand and official seal at office in Knoxville, Tenn., this the 12 day of August, A. D. eighteen hundred and 91.

[NOTARIAL SEAL.] ALEX. McMILLAN,
Notary Public.

STATE OF TENNESSEE, }
Monroe County. }

Personally appeared before me, W. N. Magill, clerk of county court of said county, the within named Mrs. S. J. Callaway, the bargainor, with whom I am personally acquainted, and who acknowledged that she executed the within instrument for the purposes therein contained.

Witness my hand, at office in Madisonville, this 17th day of Aug., 1891.

[COURT SEAL.] W. N. MAGILL, *Clerk.*

THE STATE OF TENNESSEE, }
Madison County. }

Personally appeared before me, F. W. Adamson, clerk of the county court of said county, R. A. Clarke, and his wife, Emily Lea Clarke, the bargainors to the attached instrument, with whom I am personally acquainted, and who severally acknowledged that they executed the attached instrument for the purposes therein contained. And Emily Lea Clarke, wife of the said R. A. Clarke, having appeared before me privately and apart from her said husband, the said Emily Lea Clarke acknowledged the execution of said instrument to have been done by her freely, voluntarily and understandingly, without compulsion or constraint, from her said husband and for the purposes therein expressed.

Witness, F. W. Adamson, clerk of said court, this 1st day of September, 1891.

[COURT SEAL.] F. W. ADAMSON, *Clerk.*

STATE OF ILLINOIS, }
County of Madison. }

Before me, C. W. Loverett, a notary public, duly appointed,
250 commissioned and qualified in and for the county and State aforesaid, personally appeared James Barnard, with whom I am personally acquainted, and whose name is subscribed to the foregoing instrument as attorney in fact for Luke Lea Barnard, one of the within named bargainors, and who (the said James Barnard) acknowledged that he executed the within instrument, as such attorney in fact, for the purpose therein contained, and that the said instrument was by the said Luke Lea Barnard and through him, the said James Barnard, as such attorney in fact executed for the purpose therein contained.

In testimony whereof I have hereunto set my hand and notarial seal at my office in the village of Upper Alton, Illinois, this 19th day of September, A. D. 1891.

C. W. LEVERETT,
[NOTARY PUBLIC SEAL.] *Notary Public.*

STATE OF TENNESSEE, }
Monroe County. }

I, Thos. McClellan, register for said county, hereby certify that the within deed and certificates thereunto attached, were filed in my office on the 25th day of October, 1899, and noted in Note Book No. C, page 31. Recorded in Deed Book No. 5, page 250 *et seq.*

This 25th day of October, 1899.

THOS. McCLELLAN, *Register.*

STATE OF TENN., }
Polk County. }

OCTOBER 28TH, 1899, at 12:00 o'clock m.

Then was the foregoing deed of conveyance together with all certificates of probates noted in Note Book No. 1, page 38, and recorded in Registration Record No. 3, pages 486 to 490.

E. L. AMBURN, *Register*,
By A. E. LOVE, *Dep. Reg.*

Original Deed.

Moses W. Wetmore }
to
W. S. Wetmore. }

(Endorsed:) Filed Mar. 25, 1901. J. T. Carter, deputy clerk.

Know all men by these presents, that I, Moses W. Wetmore, of the county of Davidson, State of Tennessee, in consideration of the sum of five thousand dollars to me paid by William S. Wet-
251 more, of the town and county of Newport, State of Rhode Island, (the receipt whereof is hereby acknowledged) do hereby give, grant, bargain, sell and convey unto the said William S. Wetmore, his heirs and assigns, one undivided moiety or half part of all those certain tracts of land in Monroe county, State of Tennessee, and in that part of said county, which is included in the Ocoee district, and which lands are described on the map of said district on file in the entry taker's office of said district at Cleveland, Tennessee, and described as follows, viz.:

All the lands in fractional township 2, and range 7, east of the basis line in the Ocoee district and granted in the register's office of said district by Nos. 5603, 5604, 5605, 5606, 5607, 5608, 5609, 5610, 5965, 5966, 5969, 5980, 5981, 5982, 5986, 6120, 6121, 6122, 6123, 6149, 6150, 6151, containing 7,114 acres. Section 33, granted by 6136, southeast and southwest quarters of section 34, by grant 5602, southwest quarter of section 35 by grant 5975 and east half of the southeast quarter of section 32, by grant 5977, which lands are in fractional township 1 north and range 6 east, &c., containing 1,433 acres. Section 3, section 5 and southeast quarter and northeast fractional quarter of section 6 by grants Nos. 6131, 6132 and 6135, which lands are in fractional township 2 north and range 6 east of the basis line in the Ocoee district and contain 1600 acres. East half of the southwest, northwest, northeast and southeast quarters of section 7, by grant 5987. East half of the northwest and south half and northeast *corner* of the southwest quarter of section 18, by grant 6146. Northeast and southeast quarters of section 18, by grant 6145. Section 17 by grant 6147. Section 30, by grant 6116. Section 32,

by grant 6114. Section 29, by grant 6117. Section 31, by grant 6115, which are in fractional township 1 south, and range 6 east of the basis line in said district, containing 4280 acres.

Section 6 by grant 6160, northwest, southwest and southeast quarter- of section 18, by grant 6104; section 19 by grant 6103; section 30, by grant 5993 and section 31 by 5992, which lands are in fractional township 2 south and range 6 east of the basis line in said district, containing 3520 acres. Section 6 by grant 6152. Northeast fractional and northwest quarter- of section 7 by grant 6154. Northwest quarter and the southwest fractional quarter of section 6 by grant 6153, which are in fractional township 3 south and range 6 east of the basis line in said district and containing 1842 acres. Section 15 by grant 5932, section 22 by grant 5933, northeast *by* section 22, by grant 5924, northwest quarter of
252 section 26, by grant 5967. Northwest quarter of section 35 by grant 5974, and northeast quarter of section 21, by grant 5924, which lands are in fractional township 3 north and range 5 east of the basis line in said district. (1760 A.) Section 15 by grant 5985. Section 16 by 5952. Northeast and northwest quarters of section 22, by grant 5954. Southeast and southwest quarters of section 21 by grant 5941. Southwest quarter of section 21 by grant 5589. Northeast, west half of the southeast and northwest quarters of section 10, grant 5939. Section 28 by grant 5953 and 5584, southwest quarter of section 10 by grant 5947. East — of the northeast quarter of section 29 by grant 5588. Southeast quarter of section 8 by 5943 and southeast quarter of section 17 by grant 5473, which lands are in fractional township 1 north and range 4 east of the basis line in said district, containing 4400 acres, which in the aggregate contain twenty-five thousand, two hundred and forty-nine acres, being the same lands conveyed to me by deed from Francis W. Lea, dated January 30, 1851, and registered in the register's office of Monroe county, Tennessee, pages 257 and 258 of Book O.

Also one undivided moiety or half part of all and singular the following several tracts or parcels of land situated in said Monroe county, Tennessee, in said district of Ocoee and State of Tennessee, granted and conveyed to this grantor by grants from the said State of Tennessee, which said tracts are severally described as follows, viz.:

By grant 7941, a tract containing 1885 acres, situate in the 5th range east of the basis line, fractional township 1 south, and 1st, 2d, 12th and 3- sections, being the fractional sections one and three. Northeast and northwest quarters of section two, and the southeast and southwest fractional quarters of second section, beginning at the northeast corner of said quarter-.

By grant 7932, a tract containing 618 acres, situate in the 6th range east of the basis line, fractional township 1 north, and 25th, 36th, 26th and 35th sections, being the northeast fractional — of section 36. Said east and northwest fractional quarter- of section 25, northeast and southwest fractional quarter- of section 26, and northwest quarter of 35th section. Beginning at the northeast corner of said quarter-.

By grant 7933, a tract containing 640 acres, situate in the 4th range east of the basis line, fractional township 1 north, and 1st and 12th sections, being the northeast and northwest quarters of 12th southwest — of the 1st north half of the southeast and southwest quarters of the 12th section, beginning at the northeast corner of said —.

253 By grant 7934, a tract containing 160 acres, situate in the 4th range east of the basis line, fractional township 1 north and 17th section, being the northeast quarter of said section, beginning at the northeast corner of said quarter.

By grant 7935, a tract containing 640 acres, situate in the 6th range east of the basis line, fractional township 2 north, and 4th section, being the northeast, northwest, southeast and southwest quarters of said section, beginnings at the northeast corner of said quarter-.

By grant 7936, a tract containing 160 acres, situate in the 6th range east of the basis line, fractional township 2 north, and 6th section, being the southwest quarter of said section, beginning at the southwest corner of said quarter.

By grant 7937, a tract containing 640 acres, situate in the 5th range east of the basis line, fractional township 1 north, and 31st and 32d sections, being the northeast and southeast — of the 31st and northwest and southwest quarter- of the 32d section, beginning at the northeast corner of said quarter-.

By grant 7942, a tract containing 1280 acres, situate in the 6th range east of the basis line, fractional township 2 south, and 29th and 32d sections, being the northeast, northwest, southeast and southwest quarters of said sections, beginning at the northeast corner of said quarter-.

Also one undivided moiety or half part of the following several tracts of land, situate in the county of Polk, in said Ocoee district, Tennessee, granted to the grantor by said State of Tennessee, as follows, viz.:

By grant 7943, a tract containing 1280 acres, situate in the 5th range, east of the basis line, fractional township 2 south, and 30th and 31st sections, being the northeast, northwest, southeast and southwest quarters of said section, beginning at the northeast corner of said quarter-.

By grant 7928, a tract containing 1280 acres, situate in the 4th range east, of the basis line, 2d township and 6th, 7th, 18th and 19th sections, being the northeast, northwest, southeast quarters of section 6, and northeast and southeast — of sections 7 and 18, and the northeast quarter of section 19.

By grant 7929, a tract containing 480 acres, situate in the fourth range east of the basis line, second township and ninth section, being the northwest, southwest and southeast quarters of said section, beginning at the no. west corner of said quarter-.

By grant 7930, a tract containing 1280 acres, situate in the third

range east of the basis line, first township, and 28″ and 29″
254 sections, being the northeast, northwest and southeast quarters of said sections and the southwest quarter of 29″ section, beginning at the northeast corner of said quarter-.

By grant 7931, a tract containing 680 acres, situate in the 3- range east of the basis line, first township and 31″ and 28th and 32″ sections, being the southeast — of 31st, northwest and southwest — and west half of the northeast *corner* of the northeast — of 32″, and east half, southwest quarter of 28th section, beginning at the northeast corner of said quarter-.

By grant 6910, a tract containing 1280 acres, situate in the fourth range east of the basis line, 1st township and 13th and 24th section-, being the northeast, southeast, northwest and southwest — of said section-, beginning at the northeast corner of said quarters.

By grant 6911, a tract containing 480 acres, situate in the fourth range east of the basis line. 1st township and 23d section, being the northeast, southeast and southwest quarters of said section, beginning at the northeast corner of said quarters.

By grant 6912, a tract containing 1280 acres, situate in the fourth range east of the basis line. 1st township, and 25th and 26th sections, being the northeast, northwest, southeast and southwest quarters of said section-, beginning at the northeast corner of said quarter-.

By grant 6913, a tract containing 1280 acres, situate in the fourth range east of the basis line. 1st township and 35th and 36th sections, being the northeast, northwest, southeast and southwest quarters of said section-, beginning at the northeast corner of said quarter-.

By grant 6914, a tract containing 160 acres, situate in the fourth range east of the basis line. 1st township and 34th section, being the east half of the northwest and south- quarters of said section, beginning at the northwest corner of said first quarter.

By grant 6915, a tract containing 160 acres, situate in the fourth range east of the basis line. 1st township and 32d section, being the northeast quarter of said section, beginning at the northeast corner of said quarter.

By grant 6916, a tract containing 160 acres, situate in the 4th range east of the basis line, 1st township and 19th section, being the southeast quarter of said section, beginning at the southeast corner of said quarter.

By grant 7917, a tract containing 1920 acres, situate in the 4th range east of the basis line. 2d township and 1st, 2d and 3d sections, being the northeast, northwest, southeast and southwest quarters of said section, beginning at the northeast corner of said quarter-.

By grant 7918, a tract containing 1920 acres, situate in
255 the 4th range east of the basis line, 2d township and 10th, 11th and 12th sections, being the northeast, northwest, southeast and southwest quarters of said section-, beginning at the northeast corner of said quarter-.

By grant 7919, a tract containing 1920 acres, situate in the 4th range east of the basis line. 2d township, and 13th, 14th and 15th

sections being the northeast, northwest, southeast and southwest quarters of said section-, beginning at the northeast corner of said quarter-.

By grant 7920, a tract containing 1920 acres, situate in the 4th range east of the basis line, 2d township and 23d, 24th and 25th sections, being the northeast and northwest, southeast and southwest quarters of said section-, beginning at the northeast corner of said section-.

By grant 7921, a tract containing 480 acres, situate in the 4th range east of the basis line. 2d township, and 27th section being the southeast, northeast and northwest quarters of said sections, beginning at the northeast corner of said quarters.

By grant 7922, a tract containing 160 acres, situate in the 4th range east of the basis line. 2d township and 35th section, being the northeast quarter of said section, beginning at the northeast corner of said quarter.

By grant 7923, a tract containing 640 acres, situate in the 4th range east of the basis line. 2d township, and 28th section, being the northeast, northwest, southeast and southwest quarters of said section, beginning at the northeast corner of said quarter-.

By grant 7924, a tract containing 640 acres, being situate in the 4th range east of the basis line. 2d township and 21st section, being the northeast, northwest, southeast and southwest — of said section, beginning at the northeast corner of said quarter-.

By grant 7925, a tract containing 320 acres, situate in the 4th range east of the basis line. 2d township, and 25th section, being the southeast and southwest quarters of said section, beginning at the northeast corner of said first quarter.

By grant 7926, a tract containing 1920 acres, situate in the 4th range east of the basis line. 2d township, and 5th, 8th and 17th sections, being the northeast, southeast, northwest and southwest quarters of said sections, beginning at the northeast corner of said quarter-.

By grant 7927, a tract containing 1280 acres, situate in the 4th range east of the basis line. 2d township and 20th, 29th, and 32d sections, being the northeast, northwest, southeast, and southwest —
of the 20th, northwest, *north*, northeast and southeast — of the
256 29th, and the northeast quarter of the 32d of said sections, beginning at the northwest corner of said quarters. Said tracts containing in the aggregate twenty-eight thousand nine hundred and forty-three acres.

Also one undivided moiety or half part of all the following tracts or parcels of land, situate in said county of Monroe, State of Tennessee, viz: The northeast, southeast, northwest and southwest quarters of sections one and twelve in the 3d fractional township north in range 5 east of the basis line in the Ocoee district, being the land embraced in grants 6725 from the State of Tennessee, estimated to contain twelve hundred and eighty (1280) acres, more or less; also the southeast, northeast, southwest and northwest quarters of sections 11 and 2 in the 3d fractional township north range 5, east of the basis

line in the Ocoee district, being the lands embraced in grant No. 6726 from the State of Tennessee, estimated to contain twelve hundred and eighty (1280) acres, more or less; also the northeast, southeast northwest and southwest quarters of sections 13 and 14 in 3d fractional township north in range 5 east of the basis line in the Ocoee district, being the land embraced in grant 6727 and estimated to contain twelve hundred and eighty acres, more or less; also the northeast, southeast, northwest and southwest quarters of sections 24 and twenty-five in the 3d fractional township north in range 5 east of the basis line in the Ocoee district, being the land embraced in grant No. 6728, estimated to contain twelve hundred and eighty acres; also the northeast, southeast, northwest and southwest quarters of section twenty-five and the northeast, southeast and southwest quarters of section twenty-six in third fractional township north in range five east of the basis line in the Ocoee district, being the land embraced in grant No. 6729, estimated to contain eleven hundred and twenty (1120) acres, more or less.

Also the northeast, southeast, northwest and southwest quarters of section twenty-seven in the southeast, northwest and southwest fractional quarters of section twenty-one in the third fractional township north, range five east of the basis line in the Ocoee district, being the land embraced in grant No. 6730, and estimated to contain nine hundred and ninety-three acres, more or less.

Also the northeast, northwest, southeast and southwest quarters of section thirty-six and the northeast, southwest and southeast quarters of section thirty-five in the third fractional township north, in range five east of the basis line in the Ocoee district, being the land embraced in grant No. 6731, estimated to contain eleven hundred and twenty acres, more or less.

257 Also the northeast, southwest, northwest, southeast quarters of section thirty-four in the third fractional township north in range five east of the basis line in the Ocoee district, being the land embraced in grant No. 6732, and containing six hundred and forty acres, more or less.

Also the southeast and southwest quarters of section three and northwest, northeast, southeast and southwest quarters of section ten in the third fractional township north in range five east of the basis line in the Ocoee district, being the land embraced in grant No. 6733, and estimated to contain nine hundred and eighty acres, more or less, also the northeast and southeast fractional quarters of section four, and the northeast and southeast fractional quarters of section nine in the third fractional township north in range 5 east of the basis line in the Ocoee district, being the same land contained in grant No. 6734, and estimated to contain three hundred and ninety-nine acres, more or less.

Also the southwest fractional quarter of section twenty-eight, northwest of the same. Southeast fractional quarter of section sixteen; southwest fractional quarter of section twenty-one, northeast of the same; northwest fractional quarter of section eleventh and fifteenth; southeast fractional quarter of section ten and northwest and south-

west fractional quarter- of section thirty-two in the first fractional township north, range third east of the basis line in the Ocoee district, being the land embraced in grant No. 6735, and estimated to contain five hundred and fifty-two acres, more or less.

To have and to hold the same moiety or undivided one-half part of all the tracts or parcels of land hereinbefore described to him, the said William S. Wetmore, his heirs and assigns, in fee simple forever, with all the privileges and appurtenances thereunto belonging.

And I, the said Moses W. Wetmore, for myself, my heirs, executors and admin-strators do covenant with the said William S. Wetmore, his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises, that they are free from all encumbrances, that I have good right to sell and convey the same to the said William S. Wetmore, as aforesaid, and that I will, and my heirs, executors and administrators shall warrant and defend the same to the said William S. Wetmore, his heirs and assigns forever against the lawful claims and demands of all persons.

In witness whereof, I have hereunto set my hand and seal this twenty-fifth day of August, A. D. one thousand and eight hundred and fifty-two.

(Signed) M. W. WETMORE. [SEAL.]

258 Signed, sealed and delivered in presence of
28th and 32d "section" and "east" erased. "West" interlined, "corners" erased before executing.

JO. W. BELL,
Of Nashville, Tenn.
C. G. PERRY,
Of Newport, R. I.
C. I. BUSHNELL.

STATE OF RHODE ISLAND, } ss:
Town & County of Newport, }

Be it remembered that on the twenty-fifth day of August, A. D. one thousand eight hundred and fifty-two, before me, the subscriber, a notary public in and for the county and State aforesaid, duly commissioned and sworn, personally appeared, in the town of Newport, in said county of Newport, Moses W. Wetmore, known to me to be the individual described in, and who executed the foregoing deed, and he then and there acknowledged to me that the same was his free act and deed.

In witness whereof, I have hereunto set my hand and seal of office the day and year last above written.

[NOTARY SEAL.]

C. J. PERRY,
Notary Public.

STATE OF NEW YORK, }
City & County of New York, } ss:

Be it remembered that on this 9th day of September, one thousand eight hundred and fifty-two, before me, the subscriber, a commissioner in said State, appointed by the governor of the State of Tennessee to administer oaths and affirmations and to take depositions, affidavits and the acknowledgments, proof of deeds, etc., to be used or recorded in the said State of Tennessee, and duly commissioned and sworn, and dwelling in the city of New York, personally appeared Moses W. Wetmore, with whom I am personally acquainted, who acknowledged the foregoing deed for the uses and purposes therein mentioned.

In testimony whereof, I, Chas. I. Bushnell, commissioner as aforesaid, have hereunto set my hand and have affixed hereto my official seal as such commissioner the day and year aforesaid.

C. I. BUSHNELL,
Commissioner in the State of New York for the State of Tennessee, No. 65 Wall Street, Third Story, New York City.

[COMMISSIONER'S SEAL.]

259 STATE OF TENNESSEE, }
Monroe County. }

October 21st, at 6 o'clock p. m., 1852, then *was* the foregoing deed and certificates received for registration, and noted in my office, Note Book A, page 54. Registered in Book O, pages 428, 429, 430, 431, 432, 433 and 434.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

Deed of conveyance Moses W. Wetmore }
to
William S. Wetmore. }

(Endorsed:) Filed Mar. 25, 1901. J. T. Carter, deputy clerk.

Know all men by these presents, that I, Moses W. Wetmore, of the county of Davidson, State of Tennessee, in consideration of the sum of two thousand dollars, to me paid by William S. Wetmore, of the town and county of Newport, State of Rhode Island (the receipt whereof is hereby acknowledged), do hereby give, grant, bargain, sell and convey unto the said William S. Wetmore, his heirs and assigns, one undivided moiety or half part of all those certain tracts of land in Monroe county, State of Tennessee, and in that

part of said county which is included in the Ocoee district, and which lands are described on the map of said district on file in the entry taker's office of said district at Cleveland, Tennessee, and being the balance and remaining one-half part of all said lands in said county, the other one-half part of which was deeded by said Moses W. Wetmore to the said William S. Wetmore by deed dated the twenty-fifth day of August, eighteen hundred and fifty-two, and which deed was recorded in the register's office at Madisonville, on the twenty-first day of October, eighteen hundred and fifty-two, as will appear by reference to said records in Book "O," pages 428–9–30–31–32–33 and 434, and being and described as follows, viz.:

All the lands in fractional township 2, and range 7, east of the basis line of the Ocoee district and granted in the register's office of said district, by Nos. 5603, 5604, 5605, 5606, 5607, 5608, 5609, 5610, 5965, 5966, 5969, 5980, 5981, 5982, 5986, 6120, 6121, 6122, 6123, 6129, 6150, 6151, containing 7,114 acres. Sec. 34, granted by 6136. Southeast and southwest quarters of section 34, by grant 6135. Northeast and northwest fractional quarters of section 34, by grant 5602,
260 southwest quarter of section 35 by grant 5975; and east half of the southeast quarter of section 32, by grant 5977, which lands are in fractional township 1 north and range 6 east, etc., containing 1433 acres. Section 3, section 5 and southeast quarter and northeast fractional quarter of section six, by grants Nos. 6131, 6132 and 6135, which lands are in fractional township 2 north and range six east of the basis line in the Ocoee district, and containing 1600 acres.

East half of the southwest, northwest, northeast and southeast quarters of section 7, by grant 5987. East half of northwest, and south half of northeast corner of the southwest quarter of section eighteen by grant 6146. Northeast and southeast quarters of section 18 by grant 6145. Section 17 by grant 6147. Secs. 30 by 6116. Sec. 32 by grant 6114. Section 29 by grant 6117. Section 31 by grant 6115, which are in fractional township 1, south and range 6 east of the basis line in said district, containing 4280 acres. Section six, by grant 6160; northwest, southwest and southeast quarters of section 7 by 6164. Northeast, southeast and southwest quarters of section eighteen by grant 6104. Section 19 by grant 6103. Section thirty by grant 5993, and section thirty-one by grant 5992, which lands are in fractional township 2 south and range six east of the basis line in said district, containing 3520 acres. Section six by grant 6152. Northeast fractional and northwest quarter- of section 7 by grant 6154. Northwest quarter and the southwest fractional quarter of section 6 by grant 6153, which are in fractional township 3 south and range six east of the basis line in said district, and containing 1142 acres. Section 15 by grant 5932, section 22 by grant 5933. Northwest quarter of section twenty-six by grant 5967. Northwest quarter of section thirty-five by grant 5974, and northeast quarter of section twenty-one by grant 5924, which lands are in fractional township 3 north, and range five east of the basis line in said district, containing 1760 acres. Section fifteen by grant 5985; section

sixteen by 5952. Northeast and northwest quarter- of section twenty-two by grant 5954. Southeast and southwest quarters of section twenty-nine by grant 5946. Northeast quarter of section twenty-one by grant 5941. Northeast, west half of southeast, and northwest quarter- of section ten by grant 5939. Southwest quarter of section twenty-one by grant 5089. Section twenty-eight by grant 5953 and 5584. Southwest quarter of section ten by grant 5947. East of the northeast quarter of section twenty-nine by grant 5588.

Southeast quarter of section eight by 5943. And south-
261 east quarter of section seventeen by grant 5473. Which lands are in fractional township 1 north and range four east of the basis line in said district, containing 4400 acres.

Which in the aggregate contain twenty-five thousand two hundred and forty-nine acres, being the same lands conveyed to me by deed from Francis W. Lea, dated January 30th, 1851, and registered in the register's office of Monroe county, Tennessee, pages 257 and 258 of Book " O."

Also one undivided moiety or half part of all and singular the following several tracts or parcels of lands, situated in said Monroe county, in said district of Ocoee in State of Tennessee, granted and conveyed to this grantor by grants from said State of Tennessee, which said tracts are severally described as follows, viz.:

By grant 7941, a tract containing 1885 acres, situate in the fifth range east of the basis line, fractional township one, south and first, 12th, 2nd and 3rd sections, being the fractional sections 1 and three. Northeast and northwest quarters of section two, and the southeast and southwest fractional quarters of 2nd section, beginning at the northeast corner- of said quarter-.

By grant 7932, a tract containing 582 acres, situate in the 6th range east of the basis line, fractional township 1, north and 25th, 36th, 26th and 35th sections, being the northeast fractional of section thirty-six; southeast and northwest fractional quarter of section twenty-five. Northeast and southwest fractional quarter- of section twenty-six; and northwest quarter of 35th section, beginning at the northeast corner of said quarter.

By grant 7933, a tract containing 640 acres, situate in the fourth range east of the basis line, fractional township one, north and first and 12th sections, being the northeast and northwest quarters of 12th, southwest of the first, north half of the southeast and southwest quarters of the 12th section, beginning at the northeast corner of said section.

By grant 7934, a tract containing 160 acres, situate in the 4th range east of the basis line, fractional township 1 north and 17th sections, being the northeast quarter of said section, beginning at the northeast corner of said quarter.

By grant 7935, a tract containing 640 acres, situate in the 6th range, east of the basis line, fractional township 2 north, and 10th section, being the northeast, northwest, southeast and southwest quarters of said section, beginning at the northeast corner- of said quarter-.

By grant 7936, a tract containing 160 acres, situate in the 6th range east of the basis line, fractional township 2, north of
262 6th section, being the southwest quarter of said section beginning at the southwest corner of said quarter.

By grant 7937, a tract containing 640 acres, situate in the 5th range east of the basis line, fractional township one, south and 31st and 32nd section-, being the northeast and southeast of the 31st, and northwest and southwest quarters of the 32nd section-, beginning at the northeast corner- of said quarter-.

By grant 7942, containing 1280 acres, situate in the 6th range east of the basis line, fractional township 2, south and 29th and 32nd section-, being the northeast, northwest, southeast and southwest quarters of said section-, beginning at the northeast corner- of said quarter-.

Also one undivided moiety or half part of all the following tracts or parcels of land situate in the said county of Monroe, State of Tennessee, viz.:

The northeast, southeast, northwest and southwest quarters of section- 1 and 12, in the 3rd fractional township north in range 5 east of the basis line in the Ocoee district, being the land embraced in grant 6725, from the State of Tennessee, estimated to contain twelve hundred and eighty (1280) acres, more or less; also the southeast, northeast, southwest and northwest quarters of section- 11 and 2, in the 3rd fractional township, north range 5 east of the basis line in the Ocoee district, being the land embraced in grant No. 6726, from the State of Tennessee, estimated to contain twelve hundred and eighty (1280) acres, more or less.

Also the northeast, southeast, northwest and southwest quarters of sections 24 and 25, in the 3rd fractional township north in range 5 east of the basis line in the Ocoee district, being the land embraced in grant No. 6728, estimated to contain twelve hundred and eighty (1280) acres.

Also the northeast, northwest, southeast and southwest quarters of section 25, and the northeast, southeast and southwest quarters of section 26 in 3rd fractional township north in range 5 east of the basis line in the Ocoee district, being the land embraced in grant No. 6729, estimated to contain eleven hundred and twenty (1120) acres, more or less.

Also the northeast, southeast, northwest and southwest quarters of section 27, and the southeast, northwest and southwest fractional quarters of section 21 in the 3rd fractional township, north range 5 east of the basis line, in the Ocoee district, being the lands embraced in grant No. 6730, and estimated to contain nine hundred and ninety-three (993) acres, more or less.

263 Also the northeast, northwest, southeast and southwest quarters of section 36, and the northeast, southwest and southeast quarters of section 35, in the 3rd fractional township north in range 5 east of the basis line in the Ocoee district, being the land embraced in grant No. 6731, estimated to contain 1120 acres, more or less.

Also the northeast, northwest, southeast and southwest quarters of section 34 in the 3rd fractional township north in range 5 east of the basis line in the Ocoee district, being the land embraced in grant No. 6732, and containing 640 acres, more or less.

Also the southeast and southwest quarters of section 3, and northwest, northeast, southeast and southwest quarters of section 10 in the 3rd fractional township north, in range 5 east of the basis line in the Ocoee district, being the land embraced in grant 6733, estimated to contain 980 acres, more or less.

Also the northeast, and southeast fractional quarters of section 9, in the 3rd fractional township north, range 5, east of the basis line in the Ocoee district, being the same land contained in grant No. 6734, and estimated to contain 399 acres, more or less.

Also the southwest fractional quarter of section 28 northwest of the same, southeast fractional quarter of section 16, southwest fractional quarter of section 21, northeast of the same, northwest fractional quarter of section- 11 and 15, southeast fractional quarter of section 10, and northwest and southwest fractional quarter- of section 32 in the 1st fractional township north range 3rd east of the basis line in the Ocoee district, being the land embraced in grant No. 6735, and estimated to contain 552 acres, more or less.

And containing in the aggregate forty-two thousand one hundred and ninety-six acres, be the same more or less.

To have and to hold the same remaining moiety or half part of all the tracts or parcels of land hereinbefore described, to him, the said William S. Wetmore, his heirs and assigns, in fee simple forever, with all the privileges and appurtenances thereto belonging. And I, the said Moses W. Wetmore, for myself and my heirs, executors and administrators, do covenant with the said William S. Wetmore, his heirs and assigns, that I am lawfully seized in fee of the afore granted premises, that they are free from all encumbrances, that I have good right to sell and convey the same to the said William S. Wetmore, as aforesaid, and that I will, and my heirs, executors and administrators shall warrant and defend the same to the said William S. Wetmore, his heirs and assigns forever,
264 against the lawful claims and demands of all persons whomsoever.

In witness whereof, I have hereunto set my hand and seal, this fourteenth day of February, eighteen hundred and fifty-three.

MOSES W. WETMORE. [SEAL.]

Signed, sealed and delivered in the presence of—
ROBERT PROTHEROE.
C. I. BUSHNELL.

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered, on this 17th day of February, one thousand eight hundred and fifty-three, before me, the subscriber, a commis-

sioner in said State, appointed by the governor of the State of Tennessee, to administer oaths and affirmations, and to take depositions, affidavits, and acknowledgments and proof of deeds, etc., to be used or recorded in the said State of Tennessee, and duly commissioned and sworn, and dwelling in the city of New York, personally appeared the within named Moses W. Wetmore, with whom I am personally acquainted, who acknowledged the within deed for the uses and purposes therein contained.

In testimony whereof, I, Chas. I. Bushnell, commissioner as aforesaid, have hereunto set my hand and affixed my official seal the day and year aforesaid.

[SEAL.]

C. I. BUSHNELL,
Commissioner of the State of New York,
Appointed by the Governor of the State of Tennessee.

No. 63 Wall street, 3rd story, New York city.

STATE OF TENNESSEE,
Monroe County.

March 7th, at 11 o'clock a. m., 1853, then was the within deed and commissioner's certificate received for registration and noted in my office in Note Book A, page 59, registered in Book O, pages 534, 535, 536, 537 and 538.

Witness my hand at office in Madisonville.

WILLIAM G. BOGLE,
Register of Monroe County, Tennessee.

265 HUGH STEVENSON ET AL. *vs.* JASPER L. FAIN ET AL. } Opinion.

Filed Ap'l 2, 1901. J. T. Carter, Deputy Clerk.

After all that appears in the evidence in this case, and after full discussion, the single important question of fact involved is left in doubt. It is to be borne in mind that the burden is on the complainant to establish the affirmative of the disputed proposition of fact, namely, that the State line as originally run and established by the commissioners follows the mountain course which is called the divide, between waters flowing eastwardly towards North Carolina and those flowing westwardly towards Tennessee. The question with which the court is dealing is not whether the "extreme height" of one mountain trend or the other would have been the more natural and better line to establish between the two States. The question, I repeat, is which one of the two lines in question was actually marked and established as the line. Of course the circumstances of whether one or the other of these ridges or "extreme heights" was more

natural and the better suited to be marked as the dividing line between the two States, may properly be considered in the determination of the question which line is the true one. It may be suggested that the topography of that particular section of country may now be better understood than it was at the time the original State line was run and marked under legislative authority, and it might now very well appear that a particular line would much more satisfactorily serve the purpose of marking the boundary between the two States than the one actually established, while it might not have been so apparent to those less acquainted with the topography of the country and the relative situation of the different mountain ridges or ranges towards each other, and when exactly their relative height or altitude may not have been understood. So, too, it must be remembered that with the lapse of time what is now called the Tellico river towards its source or origin may have had more the appearance of a creek and less that of a river than at the present day. These are largely speculative suggestions.

The plaintiff's contention rests largely on two propositions as is evident upon a study of the case, as well as from the course of
266 discussion by the able counsel on the hearing. It is insisted, first: That the mountain course or height which is found in following the line contended for by the plaintiffs as the boundary between the two States, is of greater height than the ridge which defendants insist upon as the line, and, furthermore, that it is the more natural boundary, being the divide between the two water systems flowing in different directions, and that in these respects it fulfills the manifest purpose declared in the legislation and in the proceedings of the commissioners, which was at all times to follow the extreme height of the Great Iron or Smoky mountain to the place where it was called the Unicoi mountain, and then along in like manner the extreme height of Unicoi mountain. It is further urged with much force that the absence in the report of the commissioners of any mention or declaration in regard to Tellico river or of the crossing it is inconsistent with the theory that the line was marked along State ridge, crossing the Tellico river as it necessarily would do following that ridge, until what is agreed to be the extreme height is again reached.

It must be admitted that these circumstances, and the argument based on them, bear with much force in favor of the proposition that the line was or ought to have been established as the plaintiffs insist it was. It must not be forgotten, however, that the strength of the argument rests at last largely on what ought to have been done in the light of what is now known, rather than what was actually done under the circumstances as understood at the time and with the knowledge then possessed by the commissioners. On the other hand the leading points in the contention of the defendants are, first, that there is undisputed evidence of State line marks which show that the State ridge was the boundary actually established by the commissioners, and it must fairly be conceded, I think, that there is considerable evidence of this kind which strongly tends to fix

the line along the course of State ridge, although there is no mention of crossing Tellico river. So far as the case depends on the evidence of a line actually marked and established, the weight of the testimony is with the defendant, it being conceded that there is not the slightest evidence of a marked line to be found between what is called County Corner near Hog Jaw gap, around the entire line twelve or more miles in length to the point between Jenks gap and the Gold Bryson gap, where it is again agreed the true line is.

It is not necessary to refer in detail to the different parts of
237 the evidence tending to show a line established by State line marks along State ridge, as these are well understood by counsel.

Another contention of the defendant is that State ridge falls within the general course called for by the commissioners, while following the line contended for by plaintiff would require a departure almost at right angles from this course and the line as previously run at the County Corner, and that the departure is too long and too decided to have been made without some mention of the fact, and certainly that the line necessary to go entirely around the disputed territory would furnish opportunities for marking and that marks would have been left. So far as there is any competent evidence admitted of reputation as to the boundary or traditional history upon the subject, the weight of this is obviously with the defendant. Under all these circumstances the plaintiff is driven to the necessity of accounting for the absence of any State line marks on the mountain crest which forms the divide between the waters, by the suggestion that the commissioners at first marked, or probably marked, the line along State ridge and across Tellico river, as contended for by the defendant, but afterwards on discovering the actual topography of the place and the relative size of the two mountain ridges in dispute, run and established the line along the mountain forming the divide between the two systems of water flow, and the evidence of one witness tends somewhat to sustain this suggestion.

After a study of this phase of the case I am constrained to think if the commissioners first run and marked the line along State ridge, and afterwards for any reason determined to change this and establish the State boundary along the other ridge or mountain, it was most natural and certainly to be expected that with the confusion and certainty of a dispute, there would have been some mention in the proceedings or report of this important fact, and this circumstance would have rendered it all the more important that the line last established should have been fully and carefully marked, for it must have been apparent to the commissioners that in the absence of marks or the mention of some natural object or monument which would have served the purpose, a line previously marked would in time necessarily have become accepted as the true boundary between the States. In other words, in order to sustain this point in the contention of the plaintiff it becomes necessary to convict the commissioners of gross negligence in view of the situa-

tion in which they had placed the subject, and the certain dispute and confusion which would result in regard to the true
268 State boundary. The circumstance, too, that the ridge on which the marked line is found has for many years been recognized and known by the name of State ridge, and that this name was given to it on account of the fact that it was supposed to mark the State boundary, must be recognized as having some force or significance. Other minor points were suggested in argument, but I do not deem it necessary to prolong this opinion with a discussion in detail of those points.

Upon the whole case, the burden being on the complainants, I conclude that the bill is not sustained and that the plaintiffs' contention is not established by the weight of the evidence. All of the facts and circumstances considered I conclude that the weight of the evidence is with the defendants. The bill is accordingly dismissed with costs.

CLARK, *J.*

Decree.

(Endorsed:) Ent'd Journal "R," p. 416. Filed 5 day of Ap'l, 1901. J. T. Carter, deputy clerk.

HUGH STEVENSON ET AL.
vs.
JASPER L. FAIN ET AL.

Be it remembered that this cause came on to be heard and determined before the Hon. C. D. Clark, in the circuit court of the United States for the northern division of the eastern district of Tennessee, on the April 5th, 1901, on the pleadings, proof on file, including all exhibits named in the depositions, and upon the whole record; from all of which it appears that this is a contention as to the true location of the State line between the well known points shown on the maps filed as exhibits to the deposition of W. D. Hale as "Laurel top" and "County Corner," and the well known points to the southwest of said "County Corner" known as "Little bald" and "Gold Bryson gap."

After hearing the cause, argument of counsel and mature deliberation, the court is of opinion and doth so adjudge and decree, that the said line between the States of Tennessee and North Carolina as run and located by the commissioners of said States in 1821, between the said well known points "Laurel top" and the well known point to the southwest of "Laurel top" known as
269 "Gold Bryson gap" was run and located by said commissioners along the extreme height of the "State ridge" to the Tellico river, thence up the "Jenks knob" to "Gold Bryson gap," being the line claimed to be the true State line by defendants as located by the commissioners in 1821.

And it further appearing to the court that the complainants,

Hugh Stevenson and others, claim title to the lands in dispute in this litigation through grants from the State of Tennessee, and that the defendants, Jasper L. Fain and others, heirs at law of Mercer Fain, deceased, acquired title to the lands in dispute by and through grants from the State of North Carolina, and that said lands are within the State of North Carolina, and south of the true State line along the said "State ridge" as hereinbefore adjudged, the court is pleased to and doth accordingly so order, adjudge and decree:

It is, therefore, adjudged and decreed by the court that the title of complainants to said lands is not valid, and that they are not entitled to the relief sought in their said bill, and that the title of the defendants to the said lands is valid and that they are entitled to the possession of the same.

It is accordingly ordered that the complainants' bill be, and the same is, dismissed, and that the complainants, and their surety, Charles Seymour, pay all the costs of this cause, for which let execution issue.

Enter this.

CLARK, *J.*

We submit this decree.

GREEN & SHIELDS.

The Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

HUGH STEVENSON, MATILDA C. ALLOWAY, Paul E. Stevenson, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Husband, James L. Kernochan, and George P. Wetmore	In Equity. No. 1153.
vs.	
WILLIAM FAIN, ROBERT FAIN, JOHN FAIN, Jasper Fain, Allan Fain, Florence Hosshaw and Her Husband, Abraham Hosshaw.	

The above named plaintiffs, conceiving themselves aggrieved by the decree made and entered on the 5 day of April, in the
270 above entitled cause, do hereby appeal from said order and decree to the United States circuit court of appeals for the sixth circuit, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States circuit court of appeals for the sixth circuit.

Dated 5th day of April, 1901.

CHAS. SEYMOUR,
Att'y for Pl'ffs.

The foregoing claim of appeal is allowed.

CLARK, *J.*

Endorsed: No. 1153. In the United States circuit court, at Knoxville. Prayer for an appeal. Filed April 6th, 1901. J. T. Carter, deputy clerk.

The Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

HUGH STEVENSON, MATILDA C. ALLOWAY, Paul E. Stevenson, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Husband, James L. Kernochan, and George P. Wetmore *vs.* WILLIAM FAIN, ROBERT FAIN, JOHN FAIN, Jasper Fain, Allan Fain, Florence Hosshaw and Her Husband, Abraham Hosshaw.	In Equity. No. 1153.

Know all men by these presents, that we, Hugh Stevenson, Matilda C. Alloway, Paul E. Stevenson, Maxwell Stevenson, Eloise Stevenson Kernochan, James L. Kernochan and George P. Wetmore, as principal-, and Charles Seymour, as surety, are held and firmly bound unto the defendants, William Fain, Robert Fain, John Fain, Jasper Fain, Allan Fain, Florence Hosshaw and Abraham Hosshaw,
271 in the full and just sum of five hundred dollars to be paid to the said defendants, William Fain, Robert Fain, John Fain, Jasper Fain, Allan Fain, Florence Hosshaw and Abraham Hosshaw, their certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5 day of April, in the year of our Lord one thousand nine hundred and one.

Whereas, lately at a circuit court of the United States for the eastern district, northern division of Tennessee, in a suit depending in said court between Hugh Stevenson, Matilda C. Alloway, Paul E. Stevenson, Maxwell Stevenson, Eloise Stevenson Kernochan, James L. Kernochan and George Peabody Wetmore, plaintiffs, and William Fain, Robert Fain, John Fain, Jasper Fain, Allan Fain, Florence Hosshaw and Abraham Hosshaw, defendants, a decree was rendered against the said Hugh Stevenson, Matilda C. Alloway, Paul E. Stevenson, Maxwell Stevenson, Eloise Stevenson Kernochan, James L. Kernochan and George P. Wetmore and the said Hugh Stevenson, Matilda C. Alloway, Paul E. Stevenson, Maxwell Stevenson, Eloise Stevenson Kernochan, James L. Kernochan and George

P. Wetmore having obtained an appeal, and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said William Fain, Robert Fain, John Fain, Jasper Fain, Allan Fain, Florence Hosshaw and Abraham Hosshaw, citing and admonishing them to be and appear at a session of the United States circuit court of appeals, for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the — day of —— next.

Now, the condition of the above obligation is such, that if the said Hugh Stevenson, Matilda C. Alloway, Paul E. Stevenson, Maxwell Stevenson, Eloise Stevenson Kernochan, James L. Kernochan and George P. Wetmore shall prosecute said appeal to effect and answer all damages and costs if they fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

GEORGE PEABODY WETMORE. [SEAL.]
MATILDA C. ALLOWAY. [SEAL.]
PAUL E. STEVENSON. [SEAL.]
ELOISE STEVENSON KERNOCHAN. [SEAL.]
JAMES L. KERNOCHAN. [SEAL.]
PAUL E. STEVENSON, *Next Friend*, [SEAL.]
By CHAS. SEYMOUR, *Att'y*. [SEAL.]
CHARLES SEYMOUR. [SEAL.]

272 Sealed and delivered in presence of:

—— ——.

—— ——.

Approved by:
C. D. CLARK.

Endorsed: No. 1153. In the United States circuit court, at Knoxville. Appeal bond. Filed April 6th, 1901. J. T. Carter, deputy clerk.

The Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

HUGH STEVENSON, MATILDA C. ALLOWAY, Paul E. Stevenson, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Husband, James L. Kernochan, and George P. Wetmore
vs.
WILLIAM FAIN, ROBERT FAIN, JOHN FAIN, Jasper Fain, Allan Fain, Florence Hosshaw and Her Husband, Abraham Hosshaw.
} In Equity. No. 1153.

Assignment of Errors.

And now on the — day of April, came the plaintiffs, by Charles Seymour, their solicitor, and say that the decree in said cause is

erroneous and against the just rights of said plaintiffs, for the following reasons:

First. That the great preponderance of evidence showed that the State line between Tennessee and North Carolina was as claimed by plaintiffs on the main ridge forming divide of the waters around by the McDaniel Bald mountain, and that plaintiffs' title was valid and defendants' claims to title should have been removed as clouds on plaintiffs' title.

Second. That the line claimed by defendants crossing Tellico river was in direct contradiction and violation of the cession acts, the acts of the legislatures of North Carolina and Tennessee establishing the boundary between the States.

Third. Because the court disregarded the calls as given in
273 the cession act of 1789 and the acts of Tennessee and North Carolina confirming the reports of commissioners establishing the State line, and considered parol evidence to establish a line different to that called for in said cession act and the confirmatory acts of Tennessee and North Carolina establishing the line.

Wherefore the said plaintiffs pray that the said decree be reversed, and that the said court may be directed to enter a decree in accordance with the prayer of the bill.

CHAS. SEYMOUR,
Sol. for Pl'ffs.

Endorsed: No. 1152. In the United States circuit court of the United States, at Knoxville. Assignment of error. Filed April 6th, 1901. J. T. Carter, deputy clerk.

In the United States Circuit Court at Knoxville, Tennessee.

HUGH STEVENSON ET AL.
vs.
JASPER FAIN ET AL.

In this cause it is agreed that all of the original maps filed as exhibits to the depositions read on the trial of the cause shall be sent up in the place and stead of copies, and shall be used in the transcript in the court of appeals at Cincinnati instead of copies of said maps.

GREEN & SHIELDS,
Sols. for Def'ts.
CHARLES SEYMOUR,
Sol. for Comp'ts.

June 1, 1901.

Endorsed: Stipulation filed June 1, 1901. J. T. Carter, deputy clerk.

274 United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } ss:

To William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Harshaw and Abraham Harshaw, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the* 15th day of June next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the eastern district of Tennessee, at Knoxville, wherein Hugh Stevenson, Matilda C. Alloway, Paul E. Stevenson, Maxwell Stevenson, by his next friend, Paul E. Stevenson, Eloise Stevenson Kernochan, James L. Kernochan and George P. Wetmore, — appellants in error, and you are respondents in error, to show cause, if any there be, why the judgment rendered against the said appellants in error as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 17th day of May, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the one hundred and twenty-fifth.

C. D. CLARK, *Judge.*

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*Not exceeding 30 days from the day of signing.

I hereby this 20th day of May, 1901, accept due personal service of this citation on behalf of William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Harshaw and Abraham Harshaw.

SAM'L G. SHIELDS.

No. 1153. In the U. S. circuit court at Knoxville. Hugh Stevenson *et al.* against William Fain *et al.* Citation, U. S. circuit court of appeals.

275 UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } ss:

United States Circuit Court of Appeals for the Sixth Circuit.

HUGH STEVENSON, MATILDA C. ALLOWAY, PAUL E. STEVENSON, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan, James L. Kernochan, and George P. Wetmore, Appellants,

vs.

WILLIAM FAIN, JOHN FAIN, ROBERT FAIN, JASPER FAIN, ALLEN Fain, Florence Harshaw, and Abraham Harshaw, Appellees.

To the clerk of said court:

Please enter my appearance as attorney for the appellees in above entitled cause. Dated this 20th day of May, 1901.

SAM'L G. SHIELDS.

UNITED STATES OF AMERICA, *Eastern District of Tennessee,* } ss:

I, Henry O. Ewing, clerk of the circuit court of the United States for the eastern district of Tennessee, do hereby certify that the foregoing 291 pages of typewritten and printed matter, together with the original Exhibits "A," "B" and "F" to the deposition of O. W. Muller and W. D. Hale, and original Exhibit "H" to deposition of W. D. Hale, attached hereto, contain a full, true and correct transcript of the record and proceedings had in said court, in the cause of Hugh Stevenson *et al. vs.* William Fain *et al.*, as the same appear on file and of record in my office.

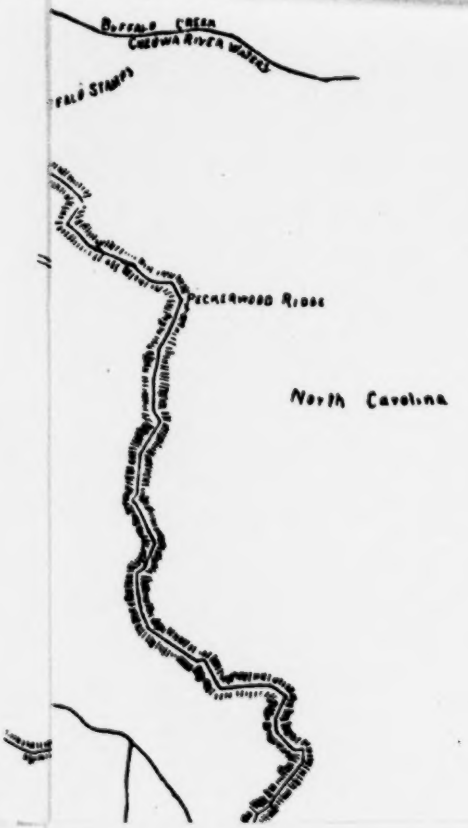
Witness my hand and the seal of said court at office in Knoxville, Tennessee, this 3rd day of June, A. D. 1901.

[SEAL.]

HENRY O. EWING, *Clerk,*
By J. T. CARTER,
Deputy Clerk.

(Here follow maps marked pp. 275*a*, 275*b*, 275*c*, 275*d*, 275*e*.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED



276 And afterwards to wit on February 6th 1902 and entry was made upon the journal of said court which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

HUGH STEVENSON
vs.
WILLIAM FAIN ET AL.

Before Lurton, Day, & Severens, JJ.

This cause is argued in part by Mr. Charles Seymour for appellant and is continued until tomorrow for further hearing.

And afterwards to wit on February 7th 1902, an entry was made upon the journal of said court in said cause which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

HUGH STEVENSON
vs.
WILLIAM FAIN ET AL.

This cause is further argued for appellant by Mr. Charles Seymour and for appellees by Mr. Samuel G. Shields and is submitted to the court.

277 And afterwards to wit on May 6th 1902, a decree was entered in said cause which is clothed in the words and figures as follows:

Decree.

278 United States Circuit Court of Appeals for the Sixth Circuit.

HUGH STEVENSON ET AL.
vs.
WILLIAM FAIN ET AL. } No. 987.

Appeal from the circuit court of the United States for the eastern district of Tennessee.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the eastern district of Tennessee, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court, in this cause be and the same is hereby affirmed with costs.

279 And afterwards towit on May 14th 1902 an opinion was filed in said cause which reads and is as follows:

Opinion.

280 United States Circuit Court of Appeals, Sixth Circuit.

HUGH STEVENSON ET AL., Appellants, *vs.* WILLIAM FAIN ET AL., Appellees.	No. 987. Appeal from the Circuit Court of the United States for the Eastern District of Tenn.

Submitted Feb. 7, 1902; decided May 6, 1902.

Before Lurton, Day, and Severens, circuit judges.

This is a bill to remove a cloud upon the title to a body of wild mountain lands, including about 10,000 acres, lying adjacent to the boundary between Tennessee and North Carolina.

The complainants claim title to the lands under grants from the State of Tennessee and mesne conveyances to them, and aver, that they are in possession, and that said lands lie wholly in Monroe county, Tennessee. They charge that the same lands are claimed by the defendants as heirs at law of one M. Fain, who claimed same under grants from the State of North Carolina. The object of the bill is to obtain the cancellation of these grants as a cloud upon complainants' title, and for this purpose they aver that the lands so claimed and granted were not within the State of North Carolina nor subject to grant by that State.

The defendants disclaim title to any lands in Monroe county, Tennessee, and aver that the lands in controversy lie wholly within the county of Cherokee, State of North Carolina, and that they were lawfully granted to their ancestor by said State.

The issue, therefore, involves the question of the true boundary between North Carolina and Tennessee, and the decree must be for the complainants if it shall appear that the lands lie within the State of Tennessee.

Tennessee originally constituted the western part of the
281 State of North Carolina. The cession act of 1789 ceding the territory now constituting the State of Tennessee to the United States describes the eastern boundary line as follows:

"Beginning on the extreme height of the Stone mountain, at the place where the Virginia line intersects it, running thence along the extreme height of the said mountain to the place were the Wautauga river breaks through it; thence a direct course to the top of the Yellow mountain, where Bright's road crosses same; thence along the ridge of said mountain, between the waters of Doe river and the waters of Rock creek, to the place where the road

crosses the Iron mountain; from thence along the extreme height of said mountain to where Nolinchucky river runs through the same; thence to the top of the Bald mountain; thence along the extreme height of the said mountain to the Painted rock, on French Broad river; thence along the highest ridge of the said mountain to the place where it is called the 'Great Iron' or 'Smoky mountain;' thence along the extreme height of the said mountain to the place where it is called 'Unicoy,' or 'Unaka' mountain, between the Indian towns Cowee and Old Chota; thence along the main ridge of the said mountain to the southern boundary of this State."

The line here to be ascertained is included within the call beginning "thence along the extreme height of the said mountain to the place where it is called Unicoy or Unaka mountain, between the Indian towns Cowee and Old Chota."

The ascertainment of the "main ridge" of the Great Iron or "Smoky mountain" and the location of the boundary line along its "extreme height" became at an early day a matter of importance to both States.

To the end that the line thus indicated should be settled, run and marked, acts were passed in 1821 by both States providing for a joint commission to ascertain, run and mark the line of the cession act. These acts were in substantially identical terms and required the commissioners "to settle, run and re-mark the boundary line" between the two States, agreeably to the true intent and meaning of the said act of the General Assembly of North Carolina, entitled "An act for the purpose of ceding to the United States of America certain western lands therein described." Acts of Tenn. 1820 c. 22; Acts of North Carolina 2; Iredell and B. Rev. Statutes, p. 94.

The said commissioners did accordingly run and mark said line and each State passed an act ratifying, confirming and adopt-
282 ing the line as run, marked and reported by the joint commission. Acts of Tennessee, 1821, p. 45 c. 35; 2 Ired. & B. Rev. Stat. N. C., p. 96.

The Tennessee act ratifying and adopting said line so ascertained, run and marked is as follows:

"Be it enacted by the General Assembly of the State of Tennessee That the dividing line run and marked by Alexander Smith, Isaac Allen and Simeon Perry, commissioners for and on behalf of this State, and James Mebane, Montfort Stokes and Robert Love, commissioners for and on behalf of the State of North Carolina, which dividing line, as run by said commissioners, begins at a stone set up on the north side of Cataloochee turnpike road, and marked on the west side, 'Tenn. 1821,' and on the east side, 'N. C. 1821;' running thence on a southwestwardly course to the bald rock, on the summit of the Great Iron or Smoky mountain, and continuing southwestwardly on the extreme height thereof to where it strikes Tennessee river, about seven miles above the old Indian town of Tallassee, crossing Porter's gap at the distance of twenty-two miles from the beginning, passing Meigs boundary line at thirty-one and a half miles, the Equovettly path at fifty-three miles, and crossing Tennessee river at the distance of sixty-five miles from the begin-

ning; from Tennessee river to the main ridge, and along the extreme height of the same to the place where it is called the 'Unicoy' or 'Unaka' mountain, striking the old trading path leading from the valley towns to the overhills towns, near the head of the West fork of Tellico river, and at the distance of ninety-three miles from the beginning; thence along the extreme height of the Unicoy or Unaka mountain to the southwest end thereof, at the Unicoy or Unaka turnpike road, where a corner stone is set up marked 'Ten.' on the west side and 'N. C.' on the east side, and where a hickory tree is also marked on the south side 'Ten. 101 M.' and on the north side 'N. C. 101 M.' being one hundred and one miles from the beginning; from thence a due course south two miles and two-hundred and fifty-two poles to a spruce pine on the north bank of the Hiwassee river, below the mouth of Cane creek; thence up the said river the same course about one mile, and crossing the same to a maple marked 'W. D.' and 'R. A.' on the south bank of the river; thence continuing the same course due south eleven miles and two hundred and seventy-three poles to the southern boundary line of the State- of Tennessee and North Carolina, making in all one hundred and sixteen miles and two hundred and twenty-three poles from the beginning, and striking the southern boundary line twenty-three poles west of a tree in said line marked '72 M.' where was set up by said commissioners a square post, marked on the west side 'Ten. 1821' and on the east side 'N. C. 1821' and on the south side 'G,' be, and the same is hereby ratified, confirmed and established as the true boundary line between this State and North Carolina."

282½ The confirmatory North Carolina act is in identical words, but concludes with these words: "The whole distinctly marked with two chops and a blaze on each fore and aft tree, and three chops on each side line, and mile marked at the end of each mile."

That part of the boundary line here involved is included within the line described in the ratifying acts as follows:

"From Tennessee river to the main ridge, and along the extreme height of the same to the place where it is called the Unicoy or Unaka mountain." This line from the Tennessee river southwest along the "main ridge" to the Unaka mountain is perfectly well marked and settled except between two well known points in the line called "County Corners" and "Gold Brysons gap."

The distance between these two known points in the settled line is from six to twelve miles, being six miles if run along the ridge between the two points known as the "State ridge," or twelve miles if run along the crests of a series of broken ridges, lying more to the southeast. The shorter or State Ridge line is the line claimed by the defendants and the longer line the one claimed by the complainants. The small plat made from the map drawn by W. D. Hale, one of the surveyors, here following, indicates in a general way the two lines con-

(Here follows diagram marked p. 283.)

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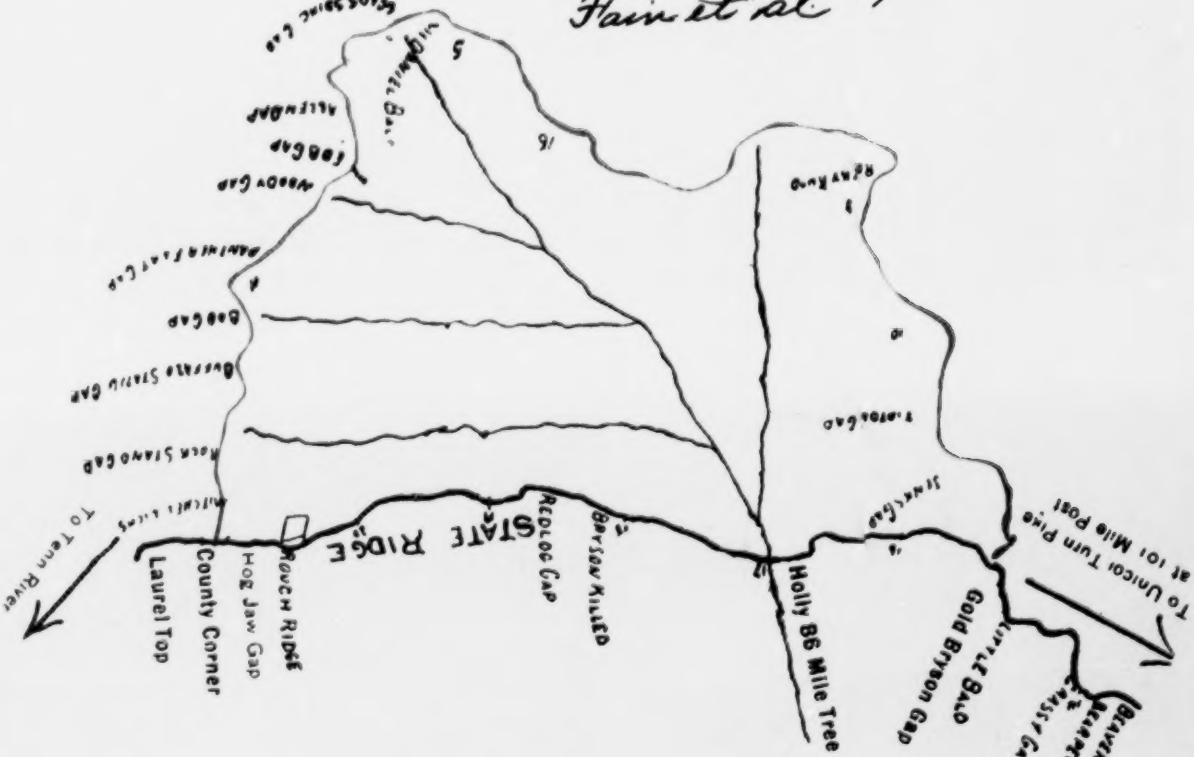
Stevenson et al } p. 283.
vs.
Fain et al



284 tended for. The longer or red line is the line urged by complainants, and, if established, throws the land in controversy on the Tennessee side of the line. The shorter or State Ridge line is the line set up by the defendants, and, if the true line, establishes their title under the North Carolina grants to M. Fain.

Upon the pleadings and a large volume of proof the court below found that the lands were situated wholly within the State of North Carolina, and were, therefore, not subject to grant by the State of Tennessee.

LURTON, circuit judge, after making the foregoing statement of the case, delivered the opinion of the court.

That the line claimed by the defendants along what is called the crest of the State ridge, being the black line between County Corner and Gold Bryson gap, as shown on the plot heretofore set out, was the line actually run and marked by the joint commission as the dividing line between the two States is established by the great weight of evidence in this record. The evidence upon which this fact rests may be briefly summed up thus:

First. Along the State Ridge line are found a number of State line trees bearing the State line marks of two chops and a blaze for fore and aft trees and three chops on each side for side line trees.

By "blocking," the annular rings of tree growth show to a demonstration that these trees were marked in 1821.

Second. No such marked line, nor a single marked tree, is shown upon the red or longer line claimed by appellants.

Third. The North Carolina act of 1821, adopting and ratifying the line so run and marked, recites that the line was "mile marked at the end of each mile." 2 Ired. & B. Rev. Stat. N. C. 96; Belding *v.* Hebard, 43 C. C. A. 296, 299.

An ancient holly tree marked "86 m." was found along this State Ridge line, which, by blocking, is shown to have been marked in 1821, and to be 86 miles from the beginning.

Fourth. The distance between "County Corners" and "Gold Brysons gap," well settled points in the boundary line, is six miles by the marked line following the State ridge, and twelve miles if the red line of broken ridges be followed as claimed by appellants.

285 The distance from the beginning point named in the act of 1821 at the Cataloochee turnpike, to a stone set and marked where the line reaches the Unaka turnpike is 101 miles, and by actual survey following the line marked on the ground this distance is shown to be only 101½ miles if the State Ridge line be followed at the disputed place in the line, while the actual distance is increased to something more than 107 miles if the line claimed by appellant is adopted. The whole gain being between the undisputed points in the conceded line, "County Corners" and "Gold Brysons gap."

Fifth. Tradition concurs with the other evidence in establishing the line run as the line along State ridge, for that ridge has been always known as the "State ridge."

Sixth. The course of the line given in both the cession acts and the confirmatory acts of 1821 is southwestwardly, and this course is that pursued by the State Ridge line, while to pursue the other line would require a sharp departure from such general course and the adoption of a southeasterly course for several miles, then a southerly course, then a westerly course until the well marked line at "Gold Brysons gap" is reached again.

Against this evidence establishing the State Ridge line as the line run and marked as the dividing line the appellants say:

First. That the evidence shows that the joint commission ran and marked the State Ridge line by mistake, supposing it to be the main ridge line. That before reporting their survey they discovered their mistake and abandoned the State Ridge line and adopted the longer main ridge line and reported such line by the description in the confirmatory act calling for a line indicated by natural monuments, to wit: the extreme height of the main ridge.

Second. That the line they contend for has been claimed as the line by Tennessee and that she has from an early date exercised jurisdiction up to that line.

Taking these positions in their order, it may be conceded that the average elevation of the ridge claimed by appellants is greater than the average elevation of the State ridge and of Jenks ridge, which also constitutes a part of the line followed by the line called the State Ridge line.

The claim to be a "ridge" at all is, however, more questionable. It consists in a succession of high peaks and low depressions called gaps by the surveyors, and is lacking in that continuity, which, to a much larger degree, constitutes the main ridge theretofore pursued by the marked boundary line. This broken ridge seems to
286 be lacking in any obvious connection with the ridge departed from at "County Corners." The ridge upon which the dividing line is located at that point continues in a southwestwardly course until it gradually descends to Tellico river. Crossing Tellico a spur is ascended which leads onto Jenks ridge at Gold Brysons gap, where the admitted marked line is again picked up.

There is nothing noticeable at County Corners or any other point within a mile on the State Ridge line which would lead an observer to suspect that the succession of ridges now claimed to be the extreme height of the main ridge was in fact the main ridge theretofore pursued.

To take the proposed line an abrupt descent of about five hundred feet must be made down the side of the State ridge when "Mitchell licks" is reached, a flat about one-fourth of a mile wide.

Then a sharp high peak is to be ascended and descended to another gap and a succession of such peaks and depressions is encountered until finally Jenks ridge is ascended and the conceded line picked up.

The departure from course is marked, for at "County Corners" the main ridge is left and a *southeasterly course* taken for about four

miles, then a southerly course, then a westerly until back on the marked line.

Although the average elevation of the line of peaks and gaps claimed to constitute the "main ridge" called for is greater than the average elevation of the State ridge, yet this is evidently due to the greater number of high peaks over which the line is supposed to go, and not to the elevation from which the peaks arise. Still if the absence or presence of the highest peaks is of significance in determining what is meant by the main ridge it is to be observed that Grassy knob, a high peak arising from the State ridge, seems to be higher on the evidence in this record than any single peak in the other line.

The objection that the State ridge terminates at Tellico river, and that another ridge called Jenks knob is ascended and followed is not appreciated. The distinct mass called State ridge may be said to terminate by a gradual descent to the gap through which the Tellico breaks through, nevertheless the State ridge and the ridge which is ascended after crossing Tellico seem to constitute parts of what, for a hundred miles, may be properly regarded as the "main ridge" of the Great Smoky mountains.

It is no more just to say that the State ridge is terminated by the Tellico gap than to say that every deep gap in the opposing line constitutes the termination of a ridge. The elevation of the
287 depression through which the Tellico runs is not shown nor have we the elevation of the many gaps in the other line. The depression of the main ridge through which Tellico finds its way is as much entitled to be regarded as a gap in that ridge as Mitchells flat, a gap in the other ridge.

The field notes of the commissioners and their report of survey are not in existence. Whether they noted the crossing of the Tellico we have no way of knowing. It is not noticed in the confirmatory acts. But the river where crossed is little more than a creek and the stream short and of little significance. It is doubtful whether the commissioners realized that the small stream crossed was the Tellico. At most the fact that the confirmatory acts do not call for the stream is of no great significance in view of the almost undisputed fact that the line crossing the Tellico was the line actually run and marked as the dividing line. The evidence relied upon to show that the State Ridge marked line was abandoned by the commissioners after being run and marked is not of weight. It consists in evidence of declarations made by deceased persons many years since, that the surveyors abandoned the State Ridge line on discovering that it was not so high as the line now set up, and that the declarants said that the commission directed that the State line marks on that ridge should be defaced and the other line marked.

The declarants were neither commissioners nor surveyors, being only subordinates, so far as appears, and engaged in manual labor.

Aside from the intrinsic weakness of all such hearsay evidence the declarations here proven are practically worthless because no defaced marks are shown on the State Ridge line and no State line

marks of any kind are proven to exist or to have ever existed on the line ordered to be marked. Neither do the declarants say that that line was ever in fact run or ever marked. That this line of broken ridges constitutes the dividing line at this point between the waters which run south into North Carolina and north into Tennessee seems to be established.

But neither the cession act nor the confirmatory boundary act call for the water "divide" as a natural boundary.

The "main ridge" which is designated as a natural monument may very well be cut by waters rising in North Carolina or Tennessee without making it any the less the "main ridge" of the Smoky mountain.

That this is the case in reference to the Tennessee river we can know from this record.

288 The contention of the learned counsel for the appellants is that a call for a natural monument in a boundary must control all other calls, and that the call in the cession act for "then along the extreme height" of the Smoky mountain is a call which can not be departed from. The general principle may be conceded. But the line thus described was a line about one hundred miles in length. The Great Iron or Smoky mountain is not a single high peak, but a great bed of mountains consisting of ridges, spurs, high peaks, deep gaps and wide valleys.

The necessity for a definite ascertainment and location of the line and its plain marking on the ground was essential to the orderly exercise of jurisdiction and for the quieting of titles.

This condition resulted in the joint commission, and each State, by the act appointing them undertook to be bound by the action of a majority of the commission. The report of this commission has been lost, one of the consequences of the civil war.

But the acts passed by each State, adopted, ratified and confirmed the "*dividing line run and marked* * * * which dividing line as run by the said commissioners, begins., etc., etc.' Tenn. Acts 1821, ch. 35.

That part of the line so "run and marked" which includes the line here involved calls to cross the Tennessee river at sixty-five miles from the beginning point at the Cataloochee turnpike and continues as follows: "From Tennessee river to the main ridge, and along the extreme height of the same to the place where it is called the Unicoy or Unaka mountain." The only descriptive call in this long line, a distance of not less than twenty-five miles, is along the "extreme height" of the "main ridge," meaning thereby "the main ridge" of that mountain range which we now know as the "Great Smoky mountains."

We are not prepared to say that this call would require in all cases that the line should run over the highest peaks of this great bed of mountains. The call is to run along the "extreme height" of the "main ridge." The controlling words are "main ridge" and qualify "extreme height." It is the "extreme heights" of that ridge which is the "main ridge" of the mountain range which is to

be followed, and it by no means follows that that ridge which had a peak or peaks rising to the greatest altitude would be the "main ridge" called for.

The general character of the ridge, having regard to its continuity, its direction, and its relation to other ridges or spurs, should
289 be considered in determining whether it is an inferior or collateral ridge or, indeed, the main back bone of the range.

All these questions would plainly arise for adjustment in locating and marking a line described in such general terms.

On the evidence in this case we are not satisfied that the State ridge upon which the commission run and marked the dividing line was not the "main ridge" within the fair meaning of that call of the ratification act. But the line confirmed, ratified and adopted by the solemn legislation of each State, was the dividing line "*run and marked*," and although the line so run and marked should now appear to have been located upon a ridge not so fully answering a call for the "extreme height" of the "main ridge" as the ridge further southeast, it would not justify this court, in a suit between private parties, in holding that the lines so "run and marked" and so adopted by both States was not the dividing line between the States.

The line run and marked by the commissioners was intended only to "mark and define that which actually existed before, but was undefined and unmarked." The running and marking of an ancient line would in no respect effect the relation of either State to the Union or to the other.

The case in its essential facts is much like that of Virginia *v.* Tennessee, 148 U. S. 503, where the line between those States was involved.

The evidence established that there had been a line run and marked by a joint commission and adopted by acts of each State. The contention was that the line so run and marked had departed from the line of 36 degrees 30 minutes, which was the ancient charter line, and that the acts adopting the line were invalid as compacts or agreements not consented to by the Congress. After showing that such consent, if necessary to the mere ascertainment and marking of a boundary line might be implied, the Supreme Court said:

"Independently of any effect due to the compact as such, a boundary line between States or provinces, as between private persons, which has been run out, located and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the courses given in the original grant; and the line so established takes effect, not as an alienation of territory, but as a definition of the true and ancient boundary."

In this aspect of the case we think the line "run and
290 marked" in 1821 was, by the confirmatory acts of each State, recognized and accepted as a running and marking of a line which actually existed before, a mere ascertainment and definition of the ancient boundary, and to be given effect even if it be now shown, under a more accurate knowledge of the geography of the

region, that the State ridge was somewhat lower in average altitude than the more broken and difficult ridge constituting the water shed at this particular point.

But it is argued that Tennessee has for many years claimed and recognized the "water divide" ridge as the true eastern line of the State. The solemn act adopting and confirming the line run and marked by the joint commission has never been repealed or modified, and by no legislative action is it shown that the State of Tennessee has sought to deny the correctness of the line so run and marked by her commissioners. The acts relied upon to show a claim to the water divide line are separate acts of executive officers of the State plainly done without intention to affect any boundary question.

The region through which the disputed line passed was, in 1821 and for many years afterwards, owned and occupied by the remnant of the great Cherokee tribe of Indians. In 1836 the Cherokee title was acquired to the Cherokee lands within the borders of Tennessee and in that year those lands were constituted a surveyors' district called "Ocoee district," and ordered to be surveyed and platted by the State surveyor general. In making his survey in 1836 that officer mistakingly included the lands in dispute within his survey, and they were platted and granted subsequently as a part of the acquired Cherokee lands. This erroneous platting made by this surveyor seems to be the source of all doubt in respect to this line, and is doubtless the origin of the error in the recent goedetic survey of this region shown by the official map published by the commission which adopts the line claimed by the appellants.

The abortive Tennessee act of 1844 providing for the organization of the new county of Jones is supposed by appellants to include the disputed lands within its boundary by the call "thence up the main South branch of said river (the Tellico) to the head, a distance of twenty-one miles to the North Carolina line, thence with the State line to the beginning." The head of the main South fork of the Tellico river is proven by one of appellants' witnesses to be "*in the neighborhood of McDaniel's bald*" a lofty peak over which the line urged by appellants passes.

It is plain that if the eastern line stopped at the head of the
291 South fork of Tellico it would not reach the North Carolina line as claimed by appellants, which passes over the extreme height of McDaniel's bald. The controlling call in the Jones County act would be the *North Carolina line*, for beyond that the State of Tennessee could not extend the new county and nothing in the act indicates that the General Assembly was in any way undertaking to claim jurisdiction beyond the well known dividing line theretofore adopted.

The act of the State surveyor in surveying and platting the lands between the State ridge and the water divide was not the act of the State. It was a plain mistake made by an official having no authority to ascertain or run or mark the line dividing the States.

True, the State granted the lands thus surveyed and platted. But

this was not under legislative direction nor is there anything to show that in thus granting these lands the executive department of the State intended to thereby intentionally claim jurisdiction beyond the old marked dividing line. Indeed, it does not appear that either the surveyor general, or the executive department concerned in issuing grants for the lands erroneously surveyed, ever knew that any part of the lands so surveyed or granted were south or east of the line run and marked in 1821. North Carolina did not have the Cherokee lands acquired by her surveyed until 1853. A part of the disputed lands were entered that year and subsequently carried into grants under which they are now held. The region is a wild and almost inaccessible mountain region, unfitted for agriculture, and valuable only for timber, difficult, if not impossible, to get out.

The only inhabitants have been tenants of recent origin claiming under one or other of the adverse claimants. No such acts of jurisdiction by either State are shown as to be of any importance in any aspect of the question.

In Belding *v.* Hebard, 43 C. C. A. 296, we had occasion to ascertain a portion of this dividing line, a few miles northeast of the part now in dispute. In that case we had evidence of two different lines, both probably run and marked by the joint commission.

The line called the Slick Creek line was the better marked line, but was a plain departure from the call to follow the "main ridge." There was an old marked line on the "main ridge," and though not so well marked, had the great advantage of being supported by the calls for course and the call for the extreme height of the "main ridge."

Under the evidence we held the latter to be the line "run
292 and marked" by the commission of 1821 and adopted by the confirmatory acts of both States. In that case, as in this, we were confronted with the fact that the Tennessee Cherokee survey had stopped at the Slick Creek line, and in that way recognized that as the line.

But upon the whole case we held that the evidence relied upon to pull the line away from the "extreme height" of the "main ridge" was insufficient.

The marked difference between that case and this is, first, in the fact that the "main ridge" called for in the confirmatory acts of 1821 was far more clearly ascertained than in the present case; and, secondly, there was in that case evidence that two lines had been run and marked and old State line marks shown on both lines. The call for the "main ridge" was, therefore, supplemented by the existence of artificial monuments and this turned the scale over the other, although the more plainly marked line.

Upon the whole evidence we conclude that the line run and marked in 1821 and adopted by both North Carolina and Tennessee as a definition of the true and ancient dividing line is the line located on the State ridge and the line in favor of which the court below held.

The decree dismissing the bill of complainants below must be affirmed.

293 And afterwards towit on June 13th 1902, a petition for allowance of appeal was filed which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

HUGH STEVENSON, MATILDA C. ALLOWAY, PAUL E. STEVENSON, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Her Husband, James L. Kernochan, and George P. Wetmore

vs.

WILLIAM FAIN, JOHN FAIN, JASPER FAIN, ALLEN FAIN, FLORENCE Hosshaw and Her Husband, Abraham Hosshaw.

The above named complainants, Hugh Stevenson, Matilda C. Alloway, Paul E. Stevenson, Maxwell Stevenson, by his next friend, Paul E. Stevenson, Eloise Stevenson Kernochan and husband James L. Kernochan, and George P. Wetmore, conceiving themselves aggrieved by the order entered on May 6th 1902, in the above entitled proceeding, do hereby appeal from said order to the Supreme Court of the United States, and pray that this their appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

294 And on the same day towit on June 13th, 1902, an order allowing said appeal was entered in said cause which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

HUGH STEVENSON ET AL.

vs.

WILLIAM FAIN ET AL.

It is hereby ordered that the appeal in the above entitled case to the Supreme Court of the United States be and is hereby allowed as prayed.

And afterwards towit on July 1st 1902, assignments of error were filed in said cause clothed in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

HUGH STEVENSON, MATILDA C. ALLOWAY, PAUL E. STEVENSON, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Husband, James L. Kernochan, and George P. Wetmore

vs.

WILLIAM FAIN, ROBERT FAIN, JOHN FAIN, JASPER FAIN, ALLEN Fain, Florence Hosshaw and Her Husband, Abraham Hosshaw.

Assignment of Errors.

And now, on the 30th day of June, come the said com-
295 plainants by Charles Seymour their solicitor and says that the decree in said cause is erroneous and against the just rights of said plaintiffs for the following reasons:

First. That the great preponderance of evidence showed that the State line between Tennessee and North Carolina was as claimed by plaintiffs on the main ridge forming the divide of the waters around by McDaniel Bald mountain, and that plaintiffs' title was valid and defendants' claims to title should have been removed as clouds on plaintiffs' title.

Second. That the line claimed by defendants crossing Tellico river was in direct contradiction and violation of the cession acts, the acts of the legislatures of North Carolina and Tennessee establishing the boundary between the States.

Third. Because the court disregarded the calls as given in the cession act of 1789 and the acts of Tennessee and North Carolina confirming the reports of commissioners establishing the State line, and considered parol evidence to establish a line different to that called for in said cession act and the confirmatory acts of Tennessee and North Carolina establishing the line.

Fourth. That the great preponderence of evidence showed that the State line between Tennessee and North Carolina followed the divide of waters around the head of Tellico river as originally located by the joint legislature of the two States and the recognition for more than fifty years.

Fifth. That testimony tending to show marked trees on a line different from the plain language of the acts of the legislature establishing the line should have been excluded.

Sixth. That the undisputed testimony showed that the main ridge line was 1,000 feet higher than the line claimed by defendants, and that this natural wall boundary neither required nor was susceptible of marking.

296 Wherefore the said plaintiffs pray that the said decree be reversed, and that the said court be directed to enter a decree in accordance with the prayer of the bill.

CHARLES SEYMOUR,
Solicitor for Appellants.

United States Circuit Court of Appeals for the Sixth Circuit.

HUGH STEVENSON, MATILDA C. ALLOWAY, PAUL E. STEVENSON, Maxwell Stevenson, by His Next Friend, Paul E. Stevenson; Eloise Stevenson Kernochan and Husband, James L. Kernochan, and George P. Wetmore

vs.

WILLIAM FAIN, ROBERT FAIN, JOHN FAIN, JASPER FAIN, ALLEN Fain, Florence Fain and Her Husband, *Abraham Hosshaw.*

Assignments of Error.

Comes now Hugh Stevenson, Matilda C. Alloway, Paul E. Stevenson, Maxwell Stevenson by his next friend Paul E. Stevenson, Eloise Stevenson Kernochan and husband James L. Kernochan and George Peabody Wetmore, plaintiffs in error, by their counsel and respectfully represents that they feel themselves to be aggrieved by the proceedings and decree of the United States circuit court of appeals for the sixth circuit in the above entitled cause, and assign error thereto, as follows: The court erred in dismissing complainants' bill,

1. Because the great preponderance of evidence showed that the State line between Tennessee and North Carolina was as claimed by plaintiffs on the main ridge forming divide of the waters
297 around by the McDaniel Bald mountain, and that plaintiffs' title was valid and defendants' claim to title should have been removed as clouds on plaintiffs' title.

2. Because the line claimed by defendants crossing Tellico river was in direct contradiction and violation of the cession acts, the acts of the legislatures of North Carolina and Tennessee establishing the boundary between the States.

3. Because the court disregarded the calls as given in cession act of 1789 and the acts of Tennessee and North Carolina confirming the reports of commissioners establishing the State line, and considered parol evidence to establish a line different to that called for in said cession act and the confirmatory acts of Tennessee and North Carolina establishing the line.

4. Because the great preponderance of evidence showed that the State line between Tennessee and North Carolina followed the divide of waters around the head of Telico river as originally located by the joint legislation of the two States and the recognition for more than fifty years.

5. Because testimony tending to show marked trees on a line different from the plain language of the acts of the legislature establishing the line should have been excluded.

6. Because the undisputed testimony showed that the main ridge line was 1,000 feet higher than the line claimed by defendants, and that this natural wall boundary neither required nor was susceptible of marking.

Wherefore the said Hugh Stevenson, Matilda C. Alloway Paul E. Stevenson, Maxwell Stevenson, by his next friend Paul E. Stevenson, Eloise Stevenson Kernochan and husband James L. Kernochan and George Peabody Wetmore, plaintiffs in error pray, the honorable court to examine and correct the errors assigned, and for a reversal of the decree of the United States circuit court of
298 appeals for the sixth circuit entered in the above entitled cause.

HUGH STEVENSON,
MATILDA C. ALLOWAY,
PAUL E. STEVENSON,
MAXWELL STEVENSON,
ELOISE STEVENSON KERNOCHAN,
JAMES L. KERNOCHAN,
GEORGE PEABODY WETMORE.
By —— ——, *Their Attorney.*

And afterwards on the same day to wit July 1st 1902 bond on appeal was filed clothed in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

Know all men by these presents, that we, Hugh Stevenson, M. C. Alloway, Paul E. Stevenson, Maxwell Stevenson, Eloise Stevenson Kernochan, James L. Kernochan and G. P. Wetmore as principals and Charles Seymour as surety, are held and firmly bound unto William Fain, John Fain, Robert Fain, Allen Fain, Florence Hosshaw and Abraham Hosshaw, in the full and just sum of five hundred dollars, to be paid to the said William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and Abraham Hosshaw, their certain attorneys, executors administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of June in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a term of the United States circuit court of appeals for the sixth circuit, in a suit depending in said court
299 between Hugh Stevenson, M. C. Alloway, Paul E. Stevenson, Maxwell Stevenson, Eloise Stevenson Kernochan, James L. Kernochan and G. P. Wetmore, and William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and Abraham Hosshaw a decree was rendered against the said Hugh Stevenson, M. C. Alloway, Paul E. Stevenson, Maxwell Stevenson, Eloise Stevenson Kernochan, James L. Kernochan and G. P. Wetmore and the said Hugh Stevenson, M. C. Alloway, Paul E. Stevenson, Maxwell Stevenson Eloise Stevenson Kernochan, James L. Kernochan and G. P. Wetmore having obtained an order granting them an appeal from said decree in the aforesaid suit, and a citation directed to the

said William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and Abraham Hosshaw, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next.

Now, the condition of the above obligation is such, that if the said Hugh Stevenson, M. C. Alloway, Paul E. Stevenson, Maxwell Stevenson, Eloise Stevenson Kernochan, James L. Kernochan and G. P. Wetmore shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void: else to remain in full force and virtue.

HUGH STEVENSON, [SEAL.]
M. C. ALLOWAY, [SEAL.]
PAUL E. STEVENSON, [SEAL.]
MAXWELL STEVENSON, [SEAL.]
ELOISE S. KERNOCHAN, [SEAL.]
JAMES L. KERNOCHAN, [SEAL.]
GEORGE PEABODY WETMORE, [SEAL.]
By CHARLES SEYMOUR, *Their Attorney.*
CHARLES SEYMOUR. [SEAL.]

Sealed and delivered in the presence of
T. M. NELSON.

Approved by
HORACE H. LURTON,
Sr. Circuit Judge.

300 And afterwards to wit on July 7 1902, citations were issued in said cause which read and are as follows:

Citations.

301 United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, } ss:
Sixth Judicial Circuit. }

To William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and Abraham Hosshaw, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington on the sixth day of August next pursuant to a writ of error, filed in the clerk's office of the circuit court of appeals of the United States for the sixth circuit, wherein Hugh Stevenson Paul E. Stevenson M. C. Alloway Eloise S. Kernochan James L. Kernochan Maxwell Stevenson and G. P. Wetmore are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the decree rendered against the said plaintiffs in error as

in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller Chief Justice of the United States, this 7th day of July in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States of America the one hundred and twenty seventh.

HORACE H. LURTON,
Sr. Circuit Judge, &c.

Service of the within citation is hereby acknowledged on behalf of defendants in error, William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and Abraham Hosshaw.

Knoxville, Tenn., 14 July 1902.

JOHN W. GREEN,
SAM'L G. SHIELDS,
GREEN & SHIELDS,
Attorneys for Def'ts.

302 *Citation.*

Supreme Court of the United States.

To William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and Abraham Hosshaw, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden in the city of Washington, on the sixth day of August next, pursuant to an appeal filed in the clerk's office of the United States circuit court of appeals for the sixth circuit, at Cincinnati, wherein Hugh Stevenson Matilda C. Alloway Paul E. Stevenson Maxwell Stevenson Eloise Stevenson Kernochan James L. Kernochan and G. P. Wetmore — appellants in error and you are respondents in error, to show cause, if any there be, why the decree rendered against the said appellants in error as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller Chief Justice of the United States this 7th day of July in the year of our Lord one thousand nine hundred and two and of the Independence of the United States of America the one hundred and twenty-seventh.

HORACE H. LURTON,
Sr. Circuit Judge.

Service of the within citation is hereby acknowledged on behalf of defendants in error, William Fain, John Fain, Robert Fain, Jasper Fain, Allen Fain, Florence Hosshaw and Abraham Hosshaw.

Knoxville, Tenn., 14 July 1902.

JOHN W. GREEN,
SAM'L G. SHIELDS,
GREEN & SHIELDS,
Attorneys for Def'ts.

303 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record in the case of Hugh Stevenson *et al. vs.* William Fain *et al.* No. —, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit, and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at the city of Cincinnati, Ohio, this 15 day of July A. D. 1902.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

Endorsed on cover: File No. 18,621. U. S. circuit court of appeals, sixth circuit. Term No. 98. Hugh Stevenson, Matilda C. Alloway, Paul E. Stevenson, *et al.*, appellants, *vs.* William Fain, John Fain, Robert Fain, *et al.* Filed July 25, 1902. File No. 18,621.

FILE COPY.

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JAMES H. McKENNEY,
Clerk

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 8.

HUGH STEVENSON ET ALS., APPELLANTS,

vs.

WM. FAIN ET ALS., APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF OF CHARLES SEYMOUR AND WEBB, McCLUNG & BAKER, COUNSEL FOR APPELLANTS.

CHARLES SEYMOUR, *Counsel.*

T. S. WEBB,
HU. L. McCLUNG,
L. M. G. BAKER,
Of Counsel.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 19089

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 4.

HUGH STEVENSON ET ALS., APPELLANTS,

vs.

WM. FAIN ET ALS., APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF OF CHARLES SEYMOUR AND WEBB, McCLUNG & BAKER, COUNSEL FOR APPELLANTS.

This is a suit in equity, brought by the appellants in the United States circuit court at Knoxville, Tennessee, to remove a cloud from the title to about 10,000 acres of mountain land lying on the line between Tennessee and North Carolina. The land lies either in Monroe county, Tennessee, or in Cherokee county, North Carolina.

If the State line between Tennessee and North Carolina is located where appellants claim it to be, then the land is

in Tennessee; but if it is located where appellees claim it to be, then the land lies in North Carolina. If the land is in Tennessee, then appellants are entitled to the relief sought, because they claim under grants from the State of Tennessee, while appellees claim under grants from the State of North Carolina, and expressly disclaim title to any lands in Tennessee.

The honorable circuit judge at Knoxville was of the opinion that the land was in North Carolina, and pronounced a decree dismissing the bill of appellants. From this decree appellants appealed to the circuit court of appeals for the sixth circuit, and that court affirmed the decree of the circuit court. Appellants have appealed to this court and assigned errors.

The Hon. H. H. Lurton, who delivered the opinion of the court of appeals, has preluded his opinion with a correct statement of the case, and we hereby adopt said statement.

Record, pp. 245–'6–'7–'8–'9.

The map, filed as part of the opinion (at p. 248 of the Record), is a reduced copy of Exhibit "A" to W. D. Hale's deposition (p. 244), which fairly represents the land in controversy.

The only question in the case is whether the State line runs with the red line, as claimed by the appellants, or with the black line, as claimed by the appellees. Both the circuit court and the court of appeals held that the true State line runs with the black line, and that the land in dispute is on the North Carolina side of the line, and belongs to defendants.

It is conceded by all parties that the point marked "County corner" on the northeast and the point marked "Gold Bryson gap" on the southwest are on the true State line, and are on the "extreme height" of the "Great Iron" or "Smoky mountain," as called for by the cession act of December 3, 1789 (Record, pp. 246–'7), and are on the "main ridge" and on the "extreme height of the same," as called for by the acts of 1821 of Tennessee and North Carolina ratifying and adopting the line run by the commissioners.

The only question, then, is whether the State line between these two points is the black line or the red line; or whether the black line or the red line is on the "extreme height" of the Smoky mountain and on the "main ridge" and on the "extreme height of the same."

Brief and Argument on Behalf of Appellants.

I.

For the proper understanding of how and where the State line was fixed, we invite the attention of the court to the official acts done in fixing the line, and the circumstances under which they were done.

What is now Tennessee was formerly a part of North Carolina and was a wilderness inhabited alone by Indians and wild beasts. On account of the high mountain range which we are considering, this western portion of North Carolina was practically inaccessible to the North Carolina authorities, so that it was impossible for them to exercise jurisdiction in the same. Accordingly, in 1789, North Carolina ceded this territory to the United States. The cession

act, so far as it fixed the eastern boundary of the ceded territory, is quoted on page 246 of the printed Record, and is also found in Shannon's (Tenn.) Code, page 124. The Tennessee constitutions (of 1796, 1834, and 1870) also set out this line in article 1, section 31. In the cession act and in said constitutions, the line in dispute, after striking the Smoky mountain, is described as follows: "Thence along the *extreme* height of said mountain to the place where it is called Unicoi or Unaka mountain," &c. This call includes that portion of the line in dispute. The cession act and the constitution of 1796 were the guide by which the commissioners ran the line in 1821, and by this guide they were required to follow the "extreme height" of the mountain for a distance including the line in dispute.

The commissioners made their report, and the act of 1821 (both Tennessee and North Carolina) adopted their report and described the line run, as reported by the commissioners, as follows: "Continuing southwestwardly on the extreme height thereof (Smoky mountain) to where it strikes Tennessee river and crossing Tennessee river at the distance of sixty-five (65) miles from the beginning; from Tennessee river to the *main ridge* and along the *extreme height* of the same to the place where it is called Unicoi or Unaka mountain," &c. (Shannon's *Code, sec.* 72, *page* 125).

There is absolutely no ambiguity in this call in the cession act, the constitutions of Tennessee, or in the report of the commissioners as carried into the act of 1821, and there is *no contradiction* between this call in the cession act and constitution on the one hand and the report of the commissioners on the other. They all call for the *extreme height* and the "main ridge" of the Smoky mountain. There is,

however, a *difference* in this call. The cession act and the constitutions call for this line as running along the extreme height of Smoky mountain to where it is called Unicoi, and no halt is made at the crossing of Tennessee river, and no mention is made of such crossing. On the other hand, the report of the commissioners calls for the *extreme height* of Smoky mountain down to Tennessee river, and there makes a sixty-five-mile station, but then goes immediately to the *main ridge* and continues along the *extreme height* thereof. The only question that could possibly arise would be, which is the *main ridge* and where is the *extreme height* of said main ridge? This question does not arise upon the face of the calls, but is a question of fact, just as it is a question of fact "where is the Smoky mountain"? It will be noted that in the cession act every crossing of water is noted, as "where the Watauga river breaks through" and "where the Nolichucky river runs through," and to the "Painted rock on French Broad river," until the Smoky mountain is reached, and thence the call is a general one, as follows: "Along the extreme height of the said mountain to the place where it is called Unicoi or Unaka mountain," &c., entirely ignoring the water-crossings in this call, although this line confessedly crossed the Tennessee river and the Hiwassee river, and defendants now claim that it crosses Tellico river within the limits of the present dispute.

The commissioners did not begin the line on Stone mountain at the Virginia line, but began at the Cataloochee turnpike, below or beyond all the water-crossings called for by the cession act, and the only waters they crossed from there to the Georgia line were the Tennessee river and the Hiwassee river, and these were carefully noted and called for in the report.

The question naturally arises, why the cession act mentioned all other water-crossings and ignored the Tennessee and Hiwassee rivers?

As before stated, the cession act was passed December 3, 1789. At this early date the only white settlement in Tennessee was a mere handful of pioneers in the northeast corner, in Carter county near the Virginia line, which was known as "the Watauga settlement." This was the first settlement in the great valley of east Tennessee, and was made up of Pennsylvanians and Virginians who had drifted down the Cumberland valley and the Valley of Virginia. Very few of these settlers were from North Carolina. They were confined to the territory north of the French Broad and knew the waters that crossed the mountain in that section. The territory south of the French Broad was occupied by the Indians, and it is doubtful whether the North Carolinians who drafted the cession act knew that the Tennessee or Hiwassee river crossed the mountain. The Cherokee settlements were along near the Tennessee river and on both sides of the mountain. The report of the commissioners (1821) calls for the "old Indian town of Talassee" at the Tennessee river, and for the path leading from "the valley town to the over hills towns" at the place where the line reached Unicoi mountain. No survey had been made of this line until 1821, and then the commissioners supplied the omission of the cession act on this unknown part of the line and called for every water-crossing. Not only did they note the water-crossings, but they further called for "near the head of the West fork of Tellico river" in designating the path at Unicoi mountain. This was still a wilderness and occupied alone by the In-

dians, and the only way the commissioners could designate the line was by reference to the mountains, Indian paths, Indian towns, and water-courses. They knew of the Tellico river, and called for "near the head of the West fork of Tellico river," a few miles southwest of where appellees now claim that they ran the line across Tellico river, without noting it or calling for it, although this was the main stream of that river, and the West fork was an insignificant branch.

It will be observed also that the cession act does not call for a line running southwestwardly, or otherwise give the course of said line; but the commissioners call for running a *southwestwardly* course from Cataloochee turnpike to the Bald rock on the summit of the Smoky mountain, and continuing southwestwardly to the Tennessee river. The calls from the Tennessee river to the Unicoi mountain do not mention the points of the compass, but lie along the "extreme height" of the "main ridge" of the mountain, as it meanders, no matter how sinuous its course may be. It will also be observed that, although the line from Cataloochee turnpike to the Tennessee river called for a southwesterly course, and the general course is southwesterly, still at points in that line the course is directly west and directly south, just as it is on the red line from "County corner" to "Gold Bryson gap." Also at points northeast of the Cataloochee turnpike, which was not run by the commissioners and over which the cession act gave no courses, the line runs due north, due west, and due south, though its general course is southwesterly.

These matters are noted now, but will be referred to again in discussing the assignment of errors.

II.

The honorable circuit court of appeals (pp. 249–'50) holds that the line claimed by the defendants (black line) is established by the great weight of the evidence, and then sets out the evidence upon which this finding is rested.

On page 250 (under the 6th head) the court says:

"The course of the line given in both the cession acts and the confirmatory acts of 1821 is *southwestwardly*, and this course is that pursued by the State ridge (black) line, while to pursue the other line would require a sharp departure from such general course and the adoption of a southeasterly course for several miles, then a southerly course, then a westerly course until the well marked line at 'Gold Bryson's gap' is reached again."

In this statement the honorable court was undoubtedly in error.

The cession act is quoted in full on pages 246 and 247, and the course of the line is not given as southwestwardly or any other direction.

Again, in the act of 1821 (pp. 247–'8) the line is given as southwestwardly until the Tennessee river is reached, and from the Tennessee river (including the line in dispute) no course is given until the 101-mile post is reached at the Unicoi turnpike road, from which a due south line to the Georgia line is called for.

III.

On page 249 (under the 5th head) the honorable court says:

"Tradition concurs with the other evidence in establishing the line run as the line along State ridge (black

line), for that ridge has been always known as the State ridge."

It is respectfully submitted that not a single witness testifies that this ridge was known as the State *line* ridge or as the *State line*. Not a single witness testifies that this line was run and marked by the commissioners, or that it was adopted by the commissioners as the true State line, and certainly the report of the commissioners does not call for this line, because it does not call for *crossing Tellico river*, as it must have done if that line had been adopted, although the commissioners knew it was Tellico river and called for "near the head of the West fork of Tellico river," a few miles further on, and although they noted and called for *every* other water-crossing on the line. It is true that several witnesses testify that this ridge was known as "State ridge," but not one of them can say *why* it was called State ridge. Some of them say they *supposed* it was because it was the State line, but not one of them has any information on the subject, and not one assumes to know that it was the State line or was called State ridge because it was the State line.

The evidence on this subject is as follows:

O. W. Muller (p. 23) says it was called "State ridge" the first time he was there, about ten years ago.

W. D. Hale (p. 30) says he first went to the locality six years ago, and (p. 31) this ridge was then called "State ridge;" also on page 36 to same effect, and also on page 40.

C. M. Watson (p. 45) says about six years ago Cal. Colvard (then about 82 years old) told him the State line was on State ridge; that he was a lad or boy, was on a survey, and

would climb a tree and wave a handkerchief, and they marked a holly after crossing Tellico river; supposes Colvard was talking about the State line survey. Colvard said "they would find marked with a tomahawk."

Jasper L. Fain (p. 58) says he first went upon the land in 1889, and it was called State ridge then.

E. R. Hunsucker, aged 79 years (p. 62), has lived in Cherokee county, N. C., since 1839; it has been known as State ridge.

J. R. McClellan, aged 36 years (p. 71), says it has *always* been known as State ridge; but he is only 36 years old.

B. Frank Payne, aged 70 years (pp. 89–90), has lived in Monroe county, Tenn., all his life and says the *red line* has been always known as the *State line*, and they never knew anything else ever since 1840; and says Larkin Brannum and Joe Graves told him the red line was the State line, and Brannum said he was on the survey, and the party got lost in a fog and went on to State ridge by mistake, and when the fog cleared he was ordered by the surveyor to deface the marks on State ridge and mark the red line.

H. Houston Miller, aged 52 years (p. 94), knew Uncle Joe Graves, who claimed to have been on the survey, and he said they got lost in a fog and did not find out they were off the line until they reached Tellico river, and then they stopped the line and made a plat calling for the red line. In 1871, Isaac Tate, 84 years old, told witness he was with the survey, and they got lost in a fog and run to the river and found it was wrong and did not run the other (red) line, but made a plat calling for it. Witness says it has been called State ridge ever since he had been there—about 20 or 30 years. He never talked to a man who thought

State ridge was the State line, and it was not called State ridge because it was the State line, but because a mistake was made there (p. 96). The accounts given by Joe Graves and Isaac Tate were currently received in the neighborhood as true and accepted as tradition (p. 96).

Jno. A. Miller, 53 years old (p. 97), was a nephew of Uncle Joe Graves, and heard him say at different times that he was with the party that run the State line, and that they made a mistake on account of a fog, and when they found they were lost and had made a mistake they made a plat or call around the heights of the mountain—the watershed—and said "these calls were adopted as a part of the line reported to the legislatures of the two States" (p. 98).

Dr. J. W. Patton, aged 72 years (p. 100), came to Murphy, N. C., in 1849; was first on State ridge in 1859 or 1860; heard it spoken of as State ridge since he came to the country; had conversations with Wm. Graves in 1859 and with Jimmie Whittaker in 1860. They both claimed to have been with the survey, and said they run down State ridge to Tellico river and marked a holly tree "86. M." He says nothing about the fog spoken of by Joe Graves and Isaac Tate.

Isaac Lovingood, aged 68 years (p. 106), lives on Hanging Dog, N. C. It has been called State ridge fifty years and suppose it was because State line was there.

B. F. Lovingood (p. 107) has known it called State ridge for forty years. A man showed me some trees marked and told me it was the State line.

Zimri Roberts, 48 years old (p. 118), was born and raised in Cherokee county, N. C. It was always called State ridge, but I do not know why.

This is the entire evidence on the question of "traditions," and we respectfully submit that there is not a particle of evidence tending to show a tradition that the State *line* was on the State *ridge* unless the fact that it was called State ridge can be taken as evidence of a tradition that the State line was on that ridge.

The only evidence of any tradition is the testimony of Payne Houston Miller and John A. Miller, who received from Larkin Brannum, Joe Graves, and Isaac Tate the information that they were on the survey and that the surveyors got lost in a fog and found it out *when they got to the Tellico river*, and then stopped the line and made a plat calling for the red line. Defendants' counsel excepted to this testimony on the direct examination, but waived the exception by cross-examining the witnesses on this same subject. These witnesses show that it was called State ridge because of the mistake caused by the fog.

Moreover, the honorable circuit court of appeals only claims a tradition that the ridge has always been known as State ridge, and not that it has been known as the State line. If this was a part of the main ridge, as claimed by the defendants, there was no more reason to call it the State ridge than to call any other 4 miles of the 101-mile line State ridge. The proof shows that this ridge was called State ridge only from county corner to the Tellico river, a distance of 4 miles, and the balance of this black line (about 3½ miles) was called Jenks' ridge, and not State ridge.

It is a fact of common knowledge that mountain people give a name to every ridge and spur, and many of such names have no meaning to the outside world.

Furthermore, evidence of tradition is at most mere hear-

say evidence, and, while it may be received on questions of ancient boundaries, it can have no weight against such evidence as the cession act and the act of 1821, both of which are plain and clear in designating this line.

IV.

The honorable circuit court of appeals (p. 249) finds as a fact that the distance from "County corner" to "Gold Bryson gap," over the black line, is six miles, and the distance between these two points, over the red line, is twelve miles, and that to adopt the red line will make the line from Cataloochee turnpike to Unaka turnpike 107 miles instead of 101, as called for in the report of the commissioners, whereas if the black line is adopted the distance will be 101½ miles, or very near to the distance reported.

This is true and raises a plausible inference in favor of the black line. But the well-settled rule is that a call for a natural boundary—such as the "main ridge"—will control the call for distance.

Brown *et al. vs.* Huger, 62 U. S., 305–'6.
Brown *vs.* Pryor, 20 U. S., 7.
McIver *vs.* Walker, 17 U. S., 444.
Hebard *vs.* Belding, 43 C. C. A., 296.
(S. C., 103 Fed. Reporter, 541.)

If it appears that the natural boundary called for is the red line, then this finding of the honorable circuit court of appeals is immaterial and cannot deflect the line to State ridge. We will show later on that the red line is the natural boundary called for.

V.

The honorable circuit court of appeals (p. 249) says the North Carolina act of 1821 recites that the line run by the commissioners was "mile marked at the end of each mile," and further says that an ancient holly tree, marked "86.M," was found on the State Ridge line, which *by blocking is shown to have been marked in 1821* and to be 86 miles from the beginning.

The honorable circuit court of appeals fell into an error of fact in stating that the holly tree marked "86.M" on the southwest side of Tellico river was blocked and showed that it had been marked in 1821. This tree was not blocked. The only holly tree that was blocked was the holly tree spoken of by Jasper L. Fain, one of the defendants, in his second deposition, and the block filed as Exhibit "B" to his deposition (p. 104). He states distinctly that the holly blocked by him was not the holly claimed to be marked "86.M," but a different holly altogether. Francis Lovingood (p. 105) speaks of the same holly, Exhibit "B."

Again, whether the holly claimed to be marked "86.M" is really marked "86.M" and is a State line tree is a doubtful question in the record.

Oscar W. Muller, an experienced surveyor, ran this line in 1895–'6 (p. 19) and says of this holly tree:

"We found a holly with some semblance of letters and figures—a figure 8, tolerably plain, a piece of an M—the remaining fragment could be tortured into several things, being very indistinct" (p. 20).

Again, on cross-examination (p. 23) he says:

"That holly has no marks on it. It has some figures.

It has one figure. *They are not surveyors' marks.* It has a figure '8' that is tolerably distinct, and then it has three prongs of an 'M' on it, and it has another thing on it. I don't know what you would call it—you can make a piece of a '7,' '5,' or '6' out of it.

On the other hand, Jasper L. Fain, the leading defendant in the case, says (on p. 50):

"And across the river here stands a holly marked '86.M,' the '86' in figures and a large 'M.'"

This is all that he states about the marks on this holly, and is all that he says about the holly except that he says he saw the holly in 1893, when McClelland was running the State Ridge line (p. 51).

On page 59, A. A. Fain, another defendant, says he was with McClelland and "found a plainly marked holly, marked '86.M'—plainly marked;" and on page 60 he says:

"There was on it the figures '86,' and looked like they were six or seven inches long, and right under them the letter 'M.'"

F. M. Lovingood (p. 65) says:

"Some two hundred yards west of the river we found a large holly. That holly was plainly marked 86–M, and near that holly was a spruce pine marked State line."

John R. McClelland, a North Carolina surveyor, ran this line in 1893, and says (p. 70) he found a holly tree marked "86–M," and on page 71 he says the marks on this holly appeared to be "very old." This tree was not blocked, and the foregoing is the only proof in the record of the marks upon it.

We respectfully submit that this proof utterly fails to show that this holly tree was marked in 1821, or that it was marked by the State commissioners, or that it is on the State line. The testimony of Muller shows that he examined this tree closely in the winter of 1895–'6, and that it was not marked "86.M."

Of the other four witnesses who say this holly was *plainly* marked "86.M," the two Fains are defendants and vitally interested in establishing the State Ridge line. They were with McClelland in 1893, when he professed to run the line for the State of North Carolina; but it is clear that he was running this line at the instance of the Fains and for the purpose of establishing their title to this land. It is claimed that he was appointed by the State of North Carolina to run it; but even if this be true, it was an *ex parte* proceeding on the part of North Carolina and was instigated by the defendants, and they were present with McClelland running the line.

B. F. Lovingood (p. 108) says he has known the locality for forty years. His deposition was taken January 5, 1901. He says the first settlements on the disputed territory were about twenty years before, or in 1881, and it was very thinly settled ten years before, or in 1891. It thus appears that the Fains began about the time (1891) the settlements began to prepare a claim to the land, and hence the McClelland survey in 1893.

The other two witnesses, McClelland and F. M. Lovingood, who say this holly tree was marked "86 M.," were North Carolina surveyors and naturally biased in favor of the North Carolina claim. None of these four witnesses are asked particularly about the appearance of the marks, and

none of them claim to have made a particular examination, while Muller did examine particularly and shows that the tree is not marked "86 M," and that the marks are not surveyors' marks, and none of them assume to give the age of the marks.

The question involved in all this testimony about this holly is whether this holly was marked by the commissioners in 1821 as being a mile tree on the State line run and marked by them. The proof offered is merely suggestive and falls far short of establishing the claim of defendants, even if we give it the fullest force and effect.

(1.) This tree is not called for in the reports of the commissioners, as stated in the act of 1821.

(2.) None of the commissioners or surveyors or other persons who were along when the line was run are produced to identify this tree and couldn't be, because all are presumably dead.

(3.) No tradition is shown as to this tree or its marks.

We concede the impossibility of producing direct and absolute proof, but insist that the proof produced is not sufficient to deflect the line from the "extreme height of the said mountain" called for by the cession act and from the "extreme height" of the "main ridge" called for by the act of 1821.

The intention of both acts is to designate the *backbone* of the Smoky mountain, and the commissioners had no right or authority to run the line anywhere else.

VI.

The honorable circuit court of appeals (p. 249) finds that no marked tree is shown on the red line or main-ridge line, and largely bases its decision upon this fact. On page 255 this fact is cited as constituting the main difference between this case and the case of *Hebard vs. Belding*, 43 C. C. A., 296. In that case the line claimed by the North Carolinians had 41 trees on it, all conceded to be State line marks and to have been made by the commissioners in 1821, and the honorable court so held; but the court held that, even admitting that the Slick Rock Creek line was run and marked by the commissioners in 1821, still it must have been done tentatively and was not adopted as the State line, because the call was for the "main ridge," and this marked line up Slick Rock creek and Fodder Stack mountain was not on the "main ridge."

That case and the case at bar are almost identical in fact and feature. In each case the North Carolina claimants seek to claim lands on the west or Tennessee side of the main ridge or backbone of the mountain, and in each case the land sought is at a point where the main mountain curves between two points, and they claim to run a chord between the two given points, so as to throw the contents of the segment thus cut off into North Carolina, and in each case they undertake to justify this departure from the main ridge by claiming to have found a marked line along the chord, and in each case the amount of land involved is 8,000 or 10,000 acres, and in each case the length of the line between the two given points along the top of the main ridge is 10 to 12 miles. In the Hebard case only

three marked trees were found on the main ridge line, and it was doubtful whether these were State-line marks, while 41 marked trees, admitted to be State-line marks, made in 1821 by the commissioners, were found on the chord or Slick Rock Creek line. The map embodied in the opinion in the Hebard case shows exactly how the Slick Rock Creek line happened to be run. As the commissioners approached the Tennessee river from the northeast the mountain broke off into three spurs. One turned to the right and reached the river exactly opposite the mouth of Slick Rock creek, and is marked "Lester's ridge." One turned to the left into North Carolina, and is not named on the map. The third continued straight down to the river, and this was the one the commissioners should have run and did finally adopt, as it connected directly with the hangover on the other side of the river. However, for the reason that the Lester ridge was more prominent at the point of divergence, or for some other reason not disclosed, the commissioners first ran down Lester's ridge and there crossed the river and ran up Slick Rock creek and the Fodder Stack mountain until they reached the top of the main ridge, where the Fodder Stack joined it. They marked this line freely, but the honorable court held that this line was tentative and that the main ridge was the true line, because the commissioners, even after running and marking this line, *reported* the true line as being on the main ridge.

It must be borne in mind, as the honorable court said in the Hebard case, that the authority of the commissioners, and their only authority, was to "settle, run, and re-mark" the line "agreeably" to the session act, and it was their duty to locate the line agreeably to the call of the cession

act for the "extreme height" of the Smoky mountain. They had no authority to depart from this call.

It must also be borne in mind that this country was in 1821 a wilderness, occupied only by the Indians, and these commissioners were the first white men to traverse the crest of that mountain. There was no ambiguity in the call of the cession act for the "extreme height" or backbone of the Smoky mountain; but to find that backbone was another thing, and this is what the commissioners were required to do in this wilderness.

It is a matter of common knowledge that the backbone or extreme height of a mountain range is not a straight line and is not level or of uniform height. It winds from right to left and is a succession of peaks and gaps.

It is also a matter of common knowledge that spurs or high ridges constantly break off from the backbone, running off in various directions, and are frequently higher than the main mountain for miles. Indeed, some of the spurs are higher than the main mountain at the points where they break off, and some of them break off from the main mountain exactly in the same direction in which the main mountain is generally trending, while the main mountain turns to the right or left, as the case may be. So it is that a man walking along the top of a mountain cannot always know at the point of junction which is the spur and which is the main mountain, and cannot know until he follows one or the other tentatively for a sufficient distance to satisfy himself. It often happens that the highest peaks of a range are on the spurs and not on the backbone.

The commissioners were required to run the extreme height of this mountain range for more than 100 miles

through a wilderness. The cession act did not even give them a *course* to run by. They were to run with the extreme height of the mountain. The extreme height of this mountain varies from about 3,000 to 6,000 feet, showing the inequalities of the backbone elevation. Its course was sometimes southwest, sometimes south, sometimes west, sometimes southeast, and sometimes east, but its general course was southwest.

It was a difficult matter for strangers to find the backbone of this mountain, with its irregularities of elevation, its sinuosity, and with spurs of like irregularities and course constantly breaking off from it. It was necessary to run tentative lines and reverse lines and to note water-crossings and other landmarks.

It was practically impossible also to mark the line over the high and precipitous peaks, and this was not done.

In running a tentative line it was necessary to mark it, so that if it turned out to be the right line it would not have to be re-marked, and if it turned out to be the wrong line they would have the marks as a guide to prevent them getting lost again on that same spur. It was in this way that the commissioners made the mistake at the Tennessee river and went down Lester's ridge and went up Slick Rock creek searching for the supposed end of the mountain to connect with Lester's ridge. And it was in this same way that they made the mistake of running from Laurel Top down to State ridge (black line) in the case at bar.

But their work was not completed by running and marking the line or lines. After all this was done they had to *report* where they had found the true line. In the Hebard case they reported the "main ridge" and not Slick Rock

creek. In the case at bar they reported the "main ridge" and not the State ridge, which was a mere spur breaking off from the main ridge.

There can be no doubt that the red line is the main ridge, is higher than State ridge, except one peak, Grassy knob, and is the watershed or divide between the headwaters of Tellico river on the Tennessee side and Snowbird and other streams on the North Carolina side.

But the question recurs, "Why are no marks to be found on the red line or main ridge?"

It is easy to explain that it was not practicable to mark the line over the wind-swept tops of the high peaks on that line, but it might have been marked in the gaps, and no doubt was marked or intended to be marked there, as the commissioners reported that they ran and marked that main ridge. Larkin Brannum told one of the witnesses that he was told by the surveyors to mark that line after they found out their mistake at Tellico river, and said he did mark some trees on the western end of the line. Assuming that this line was marked in the gaps, then what has become of the marks? It is in proof that the marks along the mountain top, where the State line is conceded to be, are not now to be found in many places for miles (Hale's dep., pp. 25–'6), but that after the line left the mountain at the 101-mile post and started due south through the timbered country the marks are thick. The marks on the red line may have been destroyed in many ways. They were made in 1821, or 83 years ago. They were not protected in any way. They may have been destroyed designedly or wantonly, but the main ridge has not been destroyed, and still *stands there as an eternal monument* to mark the boundary line.

We must not be understood as claiming that the absence of marked trees on the red line is not a circumstance to be considered. "It is most difficult to account for" the absence of marked trees on this line. In the Hebard case, as before stated, the honorable circuit court of appeals decided *against* the Slick Rock Creek line, but said, "It is most difficult to account for this line of marked trees, irregularly as they are grouped. The probabilities are that they were marked by the commission." For what purpose? is the question. The court proceeds to find that the State line was on the "main ridge," and the Slick Rock Creek line was marked *tentatively*. So it is in the case at bar. If the State ridge (black) line was marked by the commissioners—and this question we will consider later on—still it is not the "main ridge" and must have been marked tentatively or by mistake.

The question, then, is whether the red line is the "main ridge" as called for in the act of 1821.

(1.) There is no doubt that the red line follows the ridge that divides the waters of Tennessee from the waters of North Carolina, and that it is the highest backbone from which the waters flow in both directions. All the witnesses prove this. The U. S. Geological Survey of this section, made in 1884–'5–'92 and filed with the record, shows it. Especial attention is called to the fact that this map also shows that the State line, both northeast and southwest of the disputed line, is on the backbone dividing the waters of Tennessee from the waters of North Carolina, and shows the headwaters of the several streams coming up to the backbone on both sides. It also shows that the State ridge (black line) breaks off from this backbone at or near Laurel

Top and descends to the Tellico river, just as the spurs marked Haw knob, Sassafras mountain, Big Fodder Stack, Little Fodder Stack, and Salt Spring mountains on the east and the numerous spurs on the west of Laurel Top, including Jenks ridge, Sugar mountain, &c. We think that this survey, made under the authority of the Government by experts of the highest character and attainments, begun in 1884 (before any controversy had arisen) and ended in 1892 (after the controversy began), is of the greatest significance. The honorable circuit court of appeals treated this subject, after reciting that in 1836 the State of Tennessee caused the Indian lands to be platted into the Ocoee district, as follows (p. 254):

"In making this survey in 1836 that officer (making the survey and plat) mistakenly included the lands in dispute within this survey, and they were platted and granted subsequently, as a part of the acquired Cherokee lands. This erroneous platting made by this surveyor seems to be the source of all doubt in respect to this line, *and is doubtless the origin of the error in the recent geodetic survey of this region shown by the official map published by the commission which adopts the line claimed by the appellants.*"

Just why the United States commission adopted the Ocoee District survey instead of the cession act of 1821, which fixed the line, is not stated by the honorable circuit court of appeals and is not apparent. These acts had been published and were easily accessible, while the plat of the Ocoee district had not been published, but was simply on record at Nashville and to be had only by going to Nashville for inspection or procuring a certified copy. The appellees claim that they own the disputed lands under grants from

North Carolina in 1875 covering them. These grants were just as accessible to the United States commission as the plat of the Ocoee district, and the parties claiming under them were right there on the ground ready, of course, to set up and point out their claim.

However, neither the plat of the Ocoee district nor the North Carolina grants were the proper source of information for the United States commission on the subject of the State line; but the cession act and the act of 1821, fixing the line, furnished the only proper guide for the commission. These experts decided that the red line was the main ridge and the State line after surveying and taking elevations for three years in that region.

As a further objection to the red line as the main ridge, the honorable circuit court of appeals on page 250 says:

"To take the proposed (red) line, an abrupt descent of about 500 feet must be made down the side of the State ridge when 'Mitchell's licks' is reached, a flat about one-fourth of a mile wide."

The proof is that the descent from the county corner to Mitchell's licks is 410 feet perpendicular.

Jasper L. Fain's deposition, p. 55.

Fain was along with the surveyor when he made the survey and leveled the descent. Now the geological (or geodetic) map shows that the mountain at Laurel Top, or county corner, where the descent is made to the red line, is 5,000 feet high. A descent of 410 feet would make Mitchell's licks 4,590 feet high, or higher than any part of State ridge, except the peak called Grassy knob. This makes Mitchell's licks itself a very high mountain—higher than any other portion of the red line except McDaniel's bald, which is

4,662, or only 72 feet higher than Mitchell's licks. It is also higher than the point where the black line reaches the main ridge at or near Beaverdam bald. None of the red line is placed lower than 3,000 feet on this map, and its general elevation unquestionably is greater than the mountains on either side, because it is the watershed, and this is conceded by the honorable circuit court of appeals at page 251.

The map filed as Exhibit "B" to W. D. Hale's deposition shows that Mitchell's licks is higher than any part of the State ridge except Grassy knob. In mountains of such height a descent of 410 feet is a small matter at best.

Again, the honorable circuit court of appeals has fallen into an error in saying that Mitchell's licks is about a fourth of a mile wide. Counsel for appellees made this same statement in their printed brief used in the circuit court of appeals, and refer to the depositions of J. L. Fain, McClelland, F. M. Lovingood, Hunesucker, A. A. Fain, and Hale. Now, one of these witnesses testified that in going down the mountain to Mitchell's licks it was 1,400 feet along the slope of the mountain to the point where they began to ascend the next peak after crossing Mitchell's licks. The only proof as to the width of this gap is that one witness says it lies so that 10 acres might be plowed there. However, what difference would it make whether it was a fourth of a mile or 5 miles? Its elevation is 4,590 feet and it is on the backbone.

As before stated, the act of 1821, based on the report of the commissioners, does not call for crossing Tellico river, but for the main ridge. On this point the honorable circuit court of appeals (p. 251) says:

"But where they crossed is little more than a creek and the stream short and of little significance. It is doubtful

whether the commissioners realized that the small stream crossed was the Tellico."

Now, the stream crossed was the "main prong" of Tellico river, and the commissioners could not have failed to realize that they were on Tellico river, because just beyond this point they call for "near the head of the West fork of Tellico." This West fork was insignificant as compared with the "main prong" or South fork, and the call for it shows beyond a doubt that the commissioners knew where Tellico river was, and would have called for it if their line had crossed it. One of the strongest reasons given by the court in the Hebard case for discarding the marked line up Slick Rock creek and holding to the main ridge was that the act of 1821 did not call for Slick Rock creek.

We therefore respectfully submit that the honorable circuit court of appeals was in error in rejecting the red line as the main ridge and the State line, because no marked trees were found upon it.

VII.

The honorable court of chancery appeals (p. 249) finds as follows:

"Along the State Ridge line are found a number of State-line trees bearing the State-line marks of two chops and a blaze for fore-and-aft trees and three chops on each side for side-line trees."

"By 'blocking' the annular rings of tree growth show to a demonstration that these trees were marked in 1821."

The Slick Rock creek had 41 of these marked trees, which were admitted to have been marked in 1821 by the commis-

sioners, and yet the honorable circuit court of appeals held that the marking was tentative only, and that the main ridge was the line.

We now beg leave to refer to the proof as to the marked trees on the State Ridge line.

O. W. Muller's deposition was taken in January, 1900, and he says that about ten years before that time (1890) he saw a number of trees on State ridge "hacked as line trees" (p. 19), and they appeared to be about ten years old. In September, 1895, he surveyed the Slick Rock Creek line and found several trees there marked with State-line marks. In December, 1895, he, Wilson, and Hale ran the State ridge and found several trees "blocked." He proceeds: "We also found some marks or rather indications (disturbances of the bark). We blocked some of these, but found no State-line marks that were old enough to be original." After crossing the Tellico river he found the holly claimed to be marked 86. M., but says it was not so marked. Near the holly was the stump of a pine tree. He had on a former occasion examined this pine tree and found two hacks on the north and two hacks on the south. It was like a fore-and-aft tree on a quarter-section line of the Ocoee district. It was not a State-line mark. We found no other old marks (p. 20).

On page 23 he says he saw some old marks on the black line and saw one tree marked with three hacks and a chop, "but they didn't look like any mark that a surveyor would make. They are about 6 inches long and close together, and they are not more than three feet, to the best of my recollection, from the ground." They were old marks in the bark; saw one that he thought might be State-line mark, but blocked it and found it was nothing but a blaze, and was too long for a surveyor's mark.

W. D. Hale run the State line in 1895 and found many trees with scars on them, but none recognized as State-line marks. On page 26 he says the State line was heavily marked with three chops made by McClelland in 1893. On pages 40 and 41 shows that he blocked one tree, but it was not a State-line mark. It was the same tree spoken of by Muller as blocked; saw a large mountain oak in a gap marked with three hacks, but did not "juggle" it; do not think it was a State-line tree, as the hacks were too long, as if made with a broad-axe; did not think the hacks had gone through the bark.

Jasper L. Fain, one of the defendants (p. 50), found a number of marks down State Ridge line; between 20 and 25 that show plainly and several that show one or two hacks, but not all of them. On page 52 he says he found the block cut out by Hale, Wilson and Muller, and it showed a State-line mark and showed 72 or 73 years old. On page 53 he says that he and Wilson blocked an oak October 14, 1899, and it was a fore-and-aft tree and showed 78 years, he believes. He filed as Exhibit "A" the juggle which Hale took out and which he found. This deposition was taken August 24, 1900, and the witness was recalled in January, 1901, and says he juggled a spruce pine and holly on the west side of Tellico river, and the juggles show 77 or 78 years.

F. M. Lovingood (p. 65), a surveyor, says he saw a number of trees marked on State ridge and blocked a maple near the river; couldn't tell the age of the marks, but they were old; also blocked a tree near where Fain lived, about one mile west of county corner. It had been marked with three hacks, and the growth of the tree proved to our satisfaction that it had been marked about the year 1821 (p. 66).

John R. McClelland (p. 69) says he run the line in 1893 and found marked trees all the way down State ridge. They were very old marks and were State-line marks.

Francis Lovingood (p. 105) identifies the juggles, Exhibits A and B to J. L. Fain's deposition, and says he juggled them; found a number of marked trees southwest of Tellico river.

R. A. Wilson (p. 109) says there are evidences of State-line marks on State ridge and has seen several marked trees on Jenks' ridge.

This is the evidence upon which the honorable court of appeals finds that the State Ridge line was marked in 1821 by the commissioners.

We respectfully submit that this evidence falls far short of proving to a demonstration that the State Ridge line is marked as a State line. We concede that there were many marked trees on that line, but it must be borne in mind that McClelland marked that line heavily in 1893, or seven years before these witnesses testify. After seven years these marks could be easily mistaken for older marks by persons not accustomed to tree marks.

Muller and Hale both show their qualifications for determining the age of marks, and both say there were no State-line marks on that ridge in 1895, when they and Wilson surveyed it; that they blocked some of the trees and found they were not State-line marks. They both speak particularly of one tree blocked by them, which showed merely a long blaze. This same block J. L. Fain found, and he says it was a State-line mark, and showed that it was made in 1821. The long blaze may have been made by Larkin Brannum in 1821 to deface the marks of the surveyors when they were lost in the fog and got off the line.

When this evidence of State-line marks on State ridge is boiled down it amounts to this, that Jasper L. Fain is the only witness who swears positively to State-line marks, while two disinterested surveyors swear positively that there were no State-line marks on that line. To say the least of it, the question whether that ridge had any State-line marks is left in grave doubt, and in any event the proof is not sufficient to overcome the plain call for the main ridge, a great natural boundary and permanent landmark.

In the Hebard case the Slick Rock Creek line was confessedly marked with State-line marks, and there was no question about it; nevertheless, it was held that the call for the main ridge controlled, and the marks on Slick Rock creek were made tentatively.

On page 255 the honorable circuit court of appeals undertakes to differentiate the Hebard case from the case at bar, and says:

"The marked difference between that case and this is, first in the fact that the 'main ridge' called for in the confirmatory acts of 1821, was far more clearly ascertained than in the present case; and, secondly, there was in that case evidence that two lines had been run and marked and old State-line marks shown on both lines. The call for the 'main ridge' was therefore supplemented by the existence of artificial monuments and this turned the scale over the other, although the more plainly marked line."

The only way that the main ridge was "ascertained" in the Hebard case was by taking the backbone of the mountain. It is equally well ascertained in this case. It is true that three partially discredited State-line marks were found on the main ridge in the Hebard case, but there were only

three in a distance of 10 miles, and it is shown in the proof in this case that frequently the admitted State line has no marks on it for many miles. Suppose that said three trees had been destroyed as all the other marked trees within that 10 miles had been! It is not possible that their destruction could have made the Slick Rock Creek line less tentative or have kept the Hangover lead from being the "main ridge" called for in the report.

It is too clear to admit of doubt that the purpose of the cession act was to make the backbone of the mountain the line between the States, and that the act of 1820 directed the commissioners to run the line designated by the cession act, and they had no power or authority to run any other line, and that the commissioners reported that they had run along the "main ridge" or backbone, and that the act of 1821 distinctly says that they did run along the backbone of the mountain. The effect of the decision of the court of appeals is to defeat the purpose and intention of both States and of the United States and to set aside the work of the commissioners and leave the State line open to wrangle and controversy at every point where there is a curve in the main ridge and a few tentative or accidental or fraudulent marks can be found on a spur.

VIII.

The honorable circuit court of appeals (p. 253) says this case in its essential facts is much like the case of *Virginia vs. Tennessee*, 148 *U. S.*, 503, and then quotes from that case as follows:

"Independently of any effect due to the compact as such, a boundary line between States or provinces, as between

private persons, which has been run out, located and marked upon the earth, and afterwards *recognized and acquiesced in by the parties for a long course of years,* is conclusive, even if it be ascertained that it varies somewhat from the courses given in the original grant: and the line so established takes effect, not as an alienation of territory, but as a definition of the true and ancient boundary."

After thus quoting from the Virginia *vs.* Tennessee case the honorable circuit court of appeals proceeds to apply the quotation to this cause as follows:

"In this aspect of the case we think the line 'run and marked' in 1821 was, by the confirmatory acts of each State, recognized and accepted as a running and marking of the line which actually existed before, a mere ascertainment and definition of the ancient boundary, and to be given effect even if it be now shown, under a more accurate knowledge of the topography of the region, that the State ridge was somewhat lower in average altitude than the more broken and difficult ridge constituting the watershed at this particular point."

The correctness of the principle announced in the Virginia *vs.* Tennessee case is so manifest that no one can deny it; but we do deny the application of that principle to the case at bar. The State ridge (black line) has not been "run out and marked" as the State line. Neither of the States has "recognized and acquiesced in" this line "for a long course of years."

The confirmatory acts of 1821 did not recognize the running and marking of the State Ridge line as the State line. Those acts recognized and accepted a line run and marked along the top of the "main ridge." In 1836, as soon as the

Indian title was extinguished, the State of Tennessee established a land district to cover these Indian lands, and had them run out and platted, and included the disputed lands up to the red line, and issued grants for them in 1842. This Ocoee survey was made only 16 years after the acts of 1821 were passed, when the commissioners and records were at hand to be consulted. A copy of the Ocoee District plat is introduced, and it is proven by Hale that this plat covers this land. The grants from the State are produced, and it is proven that they cover the land. This has been the attitude of Tennessee as to this line from 1836 to 1904, a period of 68 years. The United States Government, through its commission, recognized and adopted the red line as the true State line in 1884–'5–1892, and published to the world its map showing that the red line was the true State line. Have the parties claiming the land recognized and acquiesced in the black line as the State line? The first white man settled in that region in 1880, and it was not until 1890 that the settlements increased.

On the 15th day of January, 1895, the appellants filed their bill of ejectment in the chancery court of Monroe county, Tenn., and ejected three of said settlers. *See transcript of the record in said cause at page 199 of the printed Record.*

On the 13th day of January, 1889, appellants filed their bill in the U. S. circuit court at Knoxville against six other of said settlers, including the defendant Jasper Fain, and secured a final decree ejecting them from said land. *See transcript at page* 181 *of printed Record.*

On April 28, 1899, the bill in the case at bar was filed.

So far have the appellants been from recognizing and ac-

quiescing in the black line that they have promptly and persistently brought suit against all persons found west of the red line not holding as their tenants.

It thus clearly appears that neither the State of Tennessee nor the appellants ever recognized or acquiesced in the black line as the State line, and the case of Virginia *vs.* Tennessee can have no application.

The State of North Carolina has never claimed the black line to be the true State line and, so far as the record shows, has never even issued any grants for land inside the disputed territory. It is true that appellees say they claim the disputed land under North Carolina grants issued in 1875, and it is true that they file a lot of grants; but it does not appear from the proof or from the grants themselves that they cover the disputed land. These grants will be found on pages 73 to 85, inclusive, for 50 acres, 50 acres, 100 acres, 50 acres, 100 acres, and 100 acres—in all, 450 acres. The only proof on these title papers will be found in the depositions of Jasper L. Fain, at page 57.

His counsel asked him the question:

"I will ask you to file as Exhibit 'B' to your deposition a certified copy of the *grant* to M. Fain from the State of North Carolina *for the land in litigation.*

"Answer. I will do so.

"Question. Now, I will ask you to state whether or not the ranch you have been living on since 1889 is located on the land covered by the grant.

"Answer. Yes, sir."

None of these grants are filed as Exhibit "B," so that it is impossible to know which one of them the witness intended to say covered his ranch. It is not shown where

any of the lines or corners are upon the ground, and the mere statement of the witness that the grant covered the land would be insufficient.

All of these grants were issued in 1875 and had upon their face a condition that they should be void if not registered in Cherokee county within twelve months from date. The certificates of the register on all of said grants show that they were not registered until 1880, or five years after they were issued.

We refer to these grants to show that North Carolina never set up any claim to this land, and we must not be understood as claiming that appellants can recover on account of the weakness of their adversary's title.

Our title depends upon whether or not the land is in Tennessee.

IX.

In conclusion, we submit that the red line is the "main ridge."

O. W. Muller (p. 21) says:

"There is no other continuous ridge between the undisputed points. Standing on the spur (State ridge) on which the McClelland line is marked, the ridge running around the headwaters of the Tellico stands out prominent and distinct with its knobs and gaps, all higher than this cut-off (black) line, except where they join the north and south end, the Grassy knob being a knob close to the point of junction at the north end and Jenks' knob at the south."

The Government map shows the elevation of the red line to be more than 4,000 feet high.

It is the watershed and divides the waters of Tennessee from the waters of North Carolina.

All the witnesses agree that it is higher than the black line.

Who can say, after the lapse of 83 years, that it was not marked, especially in view of the fact that great stretches of miles are found on the *admitted* "main ridge" where the marks are gone.

This is the main ridge called for in the cession act, in the acts of 1821, in the survey of the Ocoee district, and in the grants issued by the State of Tennessee, and it does not call for crossing the Tellico river.

For convenient reference we append copies of the cessiou act and the acts of 1820 and 1821.

CHARLES SEYMOUR, *Counsel.*

T. S. WEBB,
HU. L. MCCLUNG,
L. M. G. BAKER,
Of Counsel.

APPENDIX TO APPELLANTS' BRIEF.

I.

North Carolina Cession Act of December 3, 1789.

SECTION 1. *Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by authority of the same,* That the Senators of this State in the Congress of the United States, or any of the Senators and any two of the Representatives of this State in the Congress of the United States are hereby authorized, empowered and required to execute a deed or deeds on the part and behalf of this State conveying to the United States of America, all right, title, and claim which this State has to the sovereignty and territory of the lands situate within the chartered limits of this State, west of a line beginning on the extreme height of the Stone mountain, at the place where the Virginia line intersects it, running thence along the extreme height of the said mountain, to the place where the Watauga breaks through it, thence a direct course to the top of the Yellow mountain, where Bright's road crosses the same, thence along the ridge of said mountain between the waters of Doe river and the waters of Rock creek, to the place where the road crosses the Iron mountain, from thence along the extreme height of said mountain to where Nolichucky river runs through the same, thence to the top of the Bald mountain, thence along the extreme height of the said mountain to the Painted rock, on French Broad river, thence along the highest ridge of the said mountain to the place where it is called the Great Iron or Smoky mountain, *thence along the extreme height of the said mountain, to the place where it is called Unicoy or Unaka mountain* between the Indian towns Cowee and Old Chota, thence along the main ridge of said mountain, to the southern boundary of this State, upon the following express conditions, and subject thereto:

Whitney's Land Law, p. 46.

II.

Tennessee Act of July 23, 1820, *Chapter* 22.

Be it enacted by the General Assembly of the State of Tennessee, That the governor shall be, and he is hereby authorized, to appoint three commissioners to meet the commissioners, who have been or may be appointed by the State of North Carolina, at such time and place as may by the said commissioners, or by a majority of those representing the respective States be agreed on, and with them to settle, run and remark the boundary line between this State and the State of North Carolina agreeably to the true intent and meaning of the said act of the General Assembly of the State of North Carolina, entitled "An act for the purpose of ceding to the United States of America, certain western lands therein described," commonly called the cession act.

III.

Tennessee Act of November 9, 1821, *Chapter* 35.

Be it enacted, etc., That the dividing line run and marked by Alexander Smith, Isaac Allen and Simeon Perry, commissioners, for and on behalf of this State; and James Mebane, Montfort Stokes and Robert Love, commissioners, for and on behalf of the State of North Carolina; which dividing line as run by said commissioners, begins at a stone set on the north side of Cataloochee turnpike road, and marked on the west side Tenn. 1821, and on the east side N. C. 1821; running thence on a southwestwardly course to the Bald rock, on the summit of the Great Iron or Smoky mountain, and continuing southwestwardly on the extreme height thereof to where it strikes Tennessee river about seven miles above the old Indian town Tallassee, crossing Porter's gap, at a distance of twenty-two miles from the be-

ginning, passing Meig's boundary line at thirty-one and a half miles, the Equovettly path at fifty-three miles and crossing Tennessee river at the distance of sixty-five miles from the beginning; from Tennessee river to the main ridge and along the extreme height of the same to the place where it is called the Unicoy or Unaka mountain, striking the old trading path leading from the valley town to the overhills towns, near the head of the West fork of Tellico river, and at the distance of ninety-three miles from the beginning, thence along the extreme height of the Unicoy or Unaka mountain to the southwest end thereof, at the Unicoy or Unaka turnpike road, where a cornerstone is set up marked Ten. on the west side and N. C. on the east side, and where a hickory tree is also marked on the south side Ten. 101 M. and on the north side N. C. 101 M. being one hundred and one miles from the beginning; from thence a due course south two miles and two hundred and fifty-two poles to a spruce pine on the north bank of the Hiwassee river, below the mouth of Cane creek; thence up the river the same course, about one mile, and crossing the same to a maple marked W. D. and R. A. on the south bank of the said river; thence continuing the same course due south eleven miles and two hundred and fifty-three poles to the southern boundary line of the State of Tennessee and North Carolina, making in all one hundred and sixteen miles and two hundred and twenty-three poles from the beginning; and striking the southern boundary line twenty-three poles west of a tree in said line marked 72 M. where was set up by said commissioners a square post marked on the west side Ten. 1821 and on the east side N. C. 1821, and on the south side G., be and the same is hereby ratified, confirmed and established as the true boundary line between this State and the State of North Carolina.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 8.

HUGH STEVENSON ET ALS.

vs.

WM. FAIN ET ALS.

Brief of Charles Seymour and Webb, McClung & Baker, Counsel for Appellants, upon the Question of Jurisdiction.

In the printed brief filed by the counsel for the appellees, on page 3, objections to the jurisdiction of the Supreme Court are stated as follows:

"*First.* The jurisdiction of the Federal courts in this cause is entirely dependent upon the fact that the opposite parties are citizens of different States. It involves no constitutional question, and under section 6 of the act of March 3rd, 1891, chapter 517, the decision of the United States circuit court of appeals is final and conclusive upon the parties.

"*Second.* Because the only question involved in this law-suit is one of fact, namely: In what State are the lands in

dispute situated? * * * The United States circuit court at Knoxville and the United States circuit court of appeals at Cincinnati have concurred in the finding of fact that the lands in question are in North Carolina. * * *

"The lower courts having concurred in this finding of fact, we submit that this honorable court will not review the case on the facts, as there is abundance of evidence to support the decree of the lower courts."

I.

If the jurisdiction of the circuit court at Knoxville depended *entirely* upon diverse citizenship, then the decree of the court of appeals would, under the act of 1891, be final; but such jurisdiction does not depend *entirely* upon the diverse citizenship of the parties.

We must look to the bill filed in the circuit court to ascertain the grounds of jurisdiction.

1st. The bill avers that all of the complainants except Geo. Peabody Wetmore are citizens of the State of New York, and said Wetmore is a citizen of the State of Rhode Island, and that all of the defendants except Wm. Fain are citizens of the State of North Carolina, and said Fain is a citizen of the State of Georgia.

Printed Record, page 3.

This makes a case of jurisdiction on the ground of diverse citizenship.

2d. It is also stated in the bill (Record, same page) that complainants claim the lands in controversy under grants from the State of Tennessee, and that the defendants claim

these lands under grants from the State of North Carolina, and that the title to said lands depends upon whether the lands lie in Tennessee or North Carolina, so that the location of the line between the two States is the issue in this case.

Record, page 4.

If the statement that the opposing parties claim the same lands under grants from different States and the location of the State line between the two States is the statement of a jurisdictional fact, then the jurisdiction of the circuit court did not depend *entirely* upon diverse citizenship, but upon both diverse citizenship and also upon a controversy between parties claiming lands under grants from different States.

No question of jurisdiction was made in the circuit court or in the circuit court of appeals, so that it does not appear upon what ground those courts assumed jurisdiction.

It is claimed by the appellees that this controversy between complainants and defendants claiming lands under grants from different States is not within the jurisdiction of the circuit court, because the complainants and defendants are not "citizens of the same State."

This claim is founded upon article III, section 2, of the constitution, and section 1 of the act, August 13, 1888, chapter 866, of the Acts 1887–1888.

The constitutional provision is as follows:

"The judicial power shall extend to all cases in law and "equity arising under this constitution, the laws of the "United States, and treaties made, or which shall be made, "under their authority; to all cases affecting ambassadors, "other public ministers and consuls; to all cases of admi- "ralty and maritime jurisdiction; to controversies to which

"the United States shall be a party; to controversies be-
"tween two or more States; between a State and citizens of
"another State; between citizens of different States; be-
"tween citizens of the same State claiming lands under
"grants of different States." * * *

The statute of August 13, 1888, so far as it affects the question under consideration, is the same as the constitution. Both use the same language, to wit, "between citizens of the same State claiming lands under grants of different States."

Appellees construe this provision that the circuit court has no jurisdiction of a controversy between persons claiming lands under grants of different States, *unless* such persons are citizens of the same State.

We construe it that the circuit court has jurisdiction of such a controversy, *even though* or *notwithstanding* such persons are citizens of the same State.

It will be observed that two classes of jurisdiction are provided for, one depending upon the subject-matter and the other upon citizenship and status, but both classes applying to subjects peculiarly appropriate for Federal decision and not appropriate for State decision. It was not deemed proper that a controversy between two States should be left to the decision of a State court, or that a controversy between a State and citizens of another State should be left to the decision of a State, or that a controversy between citizens of different States should be left to the decision of a State court; but no provision is made for extending the judicial power to general controversies between citizens of the same State. It was deemed proper that citizens of the same State

should submit their controversies to their own courts and accept their decisions, unless some Federal question was involved, which should be paramount to the question of citizenship.

In the clause extending the judicial power to controversies "between citizens of the same State claiming lands under grants of different States" we assume that the paramount intention was not to extend the judicial power to controversies between citizens of the same State, but to extend it to the subject-matter of claims to lands under grants from different States, without reference to the citizenship of the claimants, but as the preceding clause had limited the judicial power to controversies between citizens of different States the next clause extending the judicial power to controversies between claimants to lands under grants of different States might have been construed to be also limited to controversies in which the claimants were citizens of different States, unless it should be expressly shown that citizens of the same State were also included. Hence it was intended to *extend* the judicial power in such controversies to citizens of the same State, and not to *limit* it to them.

If it shall be held that jurisdiction in controversies between claimants of lands under grants of different States is limited to citizens of the same State and does not apply to citizens of different States, then the paramount purpose of this provision to extend the judicial power to the subject-matter will be defeated.

If some of the complainants should be citizens of the same State with the defendants and some should be citizens of different States, then the Federal court could not take juris-

diction on account of diverse citizenship, and so could not take jurisdiction at all.

The Articles of Confederation of 1778 seem to bear out our construction and to show a purpose to retain Federal control of this question.

Article IX, section 2, reserves the right in Congress to settle all disputes between States concerning boundary, jurisdiction, &c., and provides that Congress shall appoint a court to hear and determine the dispute.

Section 3 of the same article provides that "all controversies concerning the private right of soil claimed under different grants of two or more States" shall be settled in the same way.

We have been able to find only two decisions on this subject.

In *Colson et als. vs. Lewis*, 2 Wheaton, 377, the parties claimed lands under grants of different States and the court sustained the jurisdiction. The suit was in the circuit court of Kentucky and the lands were in Kentucky. The complainants were citizens of Virginia, but the citizenship of the defendants does not appear.

In the *Town of Pawlet vs. Clark*, 9 Cranch, 292, the same question was involved and the court took jurisdiction, but the citizenship of the parties did not appear.

We suggest, further, that this court would have jurisdiction of this controversy if the two States of Tennessee and North Carolina were the parties, and is the only authority which would be competent to settle such a controversy. While these two States are not parties to this cause, still they are vitally interested in the settlement of the question of the

boundary line between them, and would not be willing to accept the decision of any court other than this honorable court. If the decision of the circuit court of appeals shall be held to be final, it will invite a suit between the States to secure an adjudication from this court on the boundary. If in such a suit this court should come to a conclusion different from the circuit court of appeals and declare that the land in dispute lies in Tennessee, we would have a final decree of the circuit court of appeals decreeing title in defendants to land in Tennessee under grants from North Carolina.

II.

Does the concurrence of the circuit court and the circuit court of appeals deprive this court of jurisdiction?

We concede that ordinarily such concurrent finding would be strongly persuasive, and that this court would not be disposed to review the facts after such concurrent finding in ordinary controversies over private rights between individuals, but such concurrent finding is not binding on this court in any case, and in a matter of such public importance as the settlement of several miles of boundary between two States it could have no effect to prevent this court from reviewing the facts.

The latest expression from this honorable court on that subject is in *Schwartz vs. Dues*, 187 U. S., 26, where the master, the circuit court, and the circuit court of appeals all concurred in a finding of facts. This court said it did "not feel disposed to review." This is far from declaring that the court has no jurisdiction to review.

If we are correct in our assumption that the controversy between claimants of lands under grants of different States is a ground of jurisdiction independently of citizenship, then the decision of the court of appeals is not final.

N. P. R'way Co. vs. Harris, 158 U. S., 326.

N. P. R'way Co. vs. Soderberg, 188 U. S., 528.

J. J. Webb, Counsel.

Chas. Heymans, Counsel

SUPREME COURT OF THE UNITED

October Term, 1904.

No. 4.

HUGH STEVENSON ET ALS.

vs.

WM. FAIN ET ALS.

List of Maps Directed by the Court to Be Filed on Behalf of Appellants Showing Recognition of the State Line as Claimed by Appellants.

CHARLES STEDMAN, Counsel.

T. S. WEEB,
Of Counsel.

John A. Donovan, Printer, Washington, D. C. 1905

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 8.

HUGH STEVENSON ET ALS.

vs.

WM. FAIN ET ALS.

List of Maps Directed by the Court to be Filed on Behalf of Appellants Showing Recognition of the State Line as Claimed by Appellants.

Tennessee-North Carolina State Line Case.

MAPS IN THE ENGINEER OFFICE, WAR DEPARTMENT, WASHINGTON, D. C.

Military map of Kentucky and Tennessee, 1865.

Original map of the Cherokee country in North Carolina, surveyed in 1837. (Shows that the State line follows the water divide.)

Original map of part of Cherokee Territory, North Carolina, and Tennessee, by Capt. W. G. Williams, U. S. Engineers; 1837–'8.

Lucas's map of Tennessee. 1823. Compiled by the U. S. Topographic Engineers.

Map of East Tennessee. Captain Poe, U. S. Engineers.

Original map by Col. W. E. Merrill, U. S. Engineers. 1865.

Original map by Ed. Ruger, Chief Topographical Engineer Office, Nashville. Prepared to show the campaigns of the Army of the Cumberland. By order of General G. H. Thomas, about 1868.

List of Maps, Atlases, and Books Sent to be Used in Connection with the Tennessee-North Carolina Boundary Case.

Hinton. Tennessee, 1831. Map.

Colton. Tennessee, 1861. Map.

Hinton (J. H. ed.). The History and Topography of the United States. London, 1842.

Van Horn (T. B.). History of the Army of the Cumberland. 8°. Atlas. Cincinnati, 1875.

Mountain region of North Carolina and Tennessee, 1863. Compiled by W. L. Nicholson. Map.

North Carolina and South Carolina, etc., 1861. J. H. Colton.

Mitchell. North Carolina, South Carolina, 1832.

Hazard (W. P.). Southern States (railroad and military map of the), 1862.

Tanner. Tennessee, 1830. Map.

Morse (J.). A new and elegant general atlas comprising all the new discoveries. 4°. Boston, Thomas & Andrews, 1812.

A new and elegant general atlas. Boston, 1819.

A new American atlas. Philadelphia, 1826.

Morse's North American atlas. New York, 1842.

Maps of the Society for diffusion of useful knowledge. London, 1844.

A complete historical American atlas. Philadelphia, H. C. Carey & I. Lea, 1822.

Carey's general atlas, improved and enlarged. Philadelphia, 1818.

A new American atlas, by Henry S. Tanner. Philadelphia, H. S. Tanner, 1823.

A new American atlas, by H. S. Tanner. Philadelphia, H. S. Tanner [1839].

List of Maps Requested for Use in the Supreme Court of the United States by Letter of the Clerk of the Court, Dated October 11, 1904 (53028).

Military map of Kentucky and Tennessee. (One sheet; marked T 68, Book No. 2.)

A map of the Cherokee country in North Carolina surveyed in the year 1837. Drawn from the returns of deputy surveyors by R. Deaver. (One sheet; marked H 41, Roll No. 1.)

Map of part of the Cherokee Territory situated among the mountains of North Carolina, Georgia, and Tennessee, from surveys under the direction of W. G. Williams, captain United States topographical engineers in 1837 and 1838. (One sheet; marked U. S. 125, Roll 1.)

Map of the State of Tennessee, drawn from the best authorities by F. Lucas, Jr. (One sheet; marked U. S. No. 49.)

Map of East Tennessee, prepared under the direction of Capt. O. M. Poe, corps of engineers and chief engineer military division of the Mississippi, from data furnished principally by Capt. O. M. Poe and Prof. Jas. M. Safford, 1864. (One sheet; marked T 87, Roll No. 1.)

Military map of Middle Tennessee and parts of East Tennessee and of adjoining States, being part of the department of the Cumberland, commanded by Major General Geo. H. Thomas, U. S. A. Compiled and drawn under the direction of Colonel Wm. E. Merrill, 1st U. S. V. V. engineers, captain corps of engineers and chief engineer department, Cumberland, with the assistance of Prof. J. M. Safford, late State geologist of Tennessee, by C. S. Mergell, assistant engineer. (One sheet; marked T 84, Long Roll.)

Map prepared to exhibit the campaigns in which the Army of the Cumberland took part during the war of the rebellion, by order of Major Gen. George H. Thomas, U. S. A., compiled under the direction of Brevet Major Gen. Z. B. Tower, chief engineer, military division of the Tennessee; by Ed. Ruger, supt. top'l eng'r office at Nashville. Assistants: Capt. A. Kilp and Lieut. R. Flach, 3d U. S. C. A. (heavy) and assistant top'l eng'rs. (Four sheets; marked U. S. 275 Flat, No. 1.)

Respectfully submitted.

CHARLES SEYMOUR, *Counsel.*

T. S. WEBB,
Of Counsel.

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JAMES H. McKENN

IN THE

Supreme Court of the United States

OCTOBER TERM, 1904

No. 8

HUGH STEVENSON, et al., Appellants

vs.

WM. FAIN, et al., Appellees

BRIEF FOR APPELLEES

JOHN W. GREEN,
Solicitor for Appellees

SAMUEL G. SHIELDS,
Of Counsel

S. B. NEWBAR & CO., KNOXVILLE.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 98

HUGH STEVENSON, ET ALS., Appellants.

vs.

WM. FAIN, ET ALS., Appellees.

Appeal from the United States Circuit Court of Appeals for the Sixth Circuit.

Brief and Argument of John W. Green, Solicitor for Appellees.

STATEMENT OF THE CASE.

The ostensible purpose of the bill in this cause is to remove an alleged cloud upon the complainants' claim to the fee simple title to a large body of land which they aver lies in Monroe County, Tennessee. The real purpose of the bill is to settle the title to said land as between complainants and defendants.

The bill avers that certain wild land which is described in the bill, and which is alleged to be in Monroe County, Tennessee, is owned in fee simple by the complainants under grants from the State of Tennessee, and that complainants are in possession of said land; that the defendants fraudulently procured grants for said land from the State of North Carolina, and are threatening to take possession of it under said grants, and to commit waste upon the same; and that "the title to said land depends upon the location of the State line, which is the

issue in the case, and defendants can have no possible right to it if the lands were subject to grant in the State of Tennessee."

Tr., pp. 3, 4 and 5.

The defendants deny that said land is in Monroe County in the State of Tennessee. They aver that it is in Cherokee County, in the State of North Carolina, and that it was granted by said State to one Mess Fain, the father of defendants, and that upon his death the fee simple title to said land descended to them. They further aver that they and their father have paid the taxes on said land to the State of North Carolina for many years, and had been in the open, notorious, and adverse possession of said land for a period of more than seven years before the bringing of this suit. Tr. pp. 12 **et seq.**

It will thus be seen that the complainants claim this land under grants from the State of Tennessee, while the defendants claim the same land under grants from the State of North Carolina. In settling the title to this land, therefore, it becomes necessary for the Court to find and determine the true location of the State line between the States of Tennessee and North Carolina adjacent to the land in question, as it was run and marked in 1821 by the Commissioners appointed for that purpose by the General Assemblies of said States.

The case was heard and determined by the Honorable C. D. Clark, Judge of the U. S. Circuit Court at Knoxville on April 5, 1901, when it was decreed as follows:

"After hearing the cause, argument of counsel and mature deliberation the Court is of opinion, and doth so adjudge and decree, that the said line between the States of Tennessee and North Carolina as run and located by the Commissioners of said states in 1821, between the said well known point of "Laurel Top" and the well known point to the Southwest of "Laurel Top" known as "Gold Bryson Gap" was run and located by said Commissioners along the extreme height of the

"State Ridge" to the Tellico River, thence up the "Jenk's Knob" to "Gold Bryson Gap," being the line claimed to be the true State line by the defendants as located by the Commissioners in 1821."

The Court accordingly decreed that said land lies in the State of North Carolina and that the title to the same is in the defendants. The complainant's bill was dismissed and they assigned errors and appealed to the United States Circuit Court of Appeals at Cincinnati. (Record, pp. 238-239.)

The cause was heard and determined by the United States Circuit Court of Appeals for the Sixth Circuit at Cincinnati on May 6th, 1902, and the decree of the United States Circuit Court at Knoxville was in all things affirmed. The complainants prayed for and obtained an appeal to this Honorable Court and have assigned errors. (Record, pp. 245, 256, 257, 258, 260.)

QUESTION OF JURISDICTION.

Before submitting our argument upon the merits of the cause we respectfully submit that this Honorable Court has no jurisdiction to review the decision of the Circuit Court of Appeals for the Sixth Circuit dismissing the complainants bill, for the following reasons, to-wit:

First—The jurisdiction of the Federal Courts in this cause is entirely dependent upon the fact that the opposite parties are citizens of different States. It involves no Constitutional question, and under Section 6 of the Act of March 3rd, 1891, Chapter 517, the decision of the United States Circuit Court of Appeals is final and conclusive upon the parties.

Second—Because the only question involved in this law suit is one of fact, namely: In what State are the lands in dispute situated. Or, in other words, are they on the Tennessee or North Carolina side of the State line as "**run and marked**" by the Commissioners appointed for that purpose by the Gen-

eral Assemblies of said States, and "**ratified, confirmed and established as the true boundary line**" by the General Assemblies of said States in the year 1821. (Chap. 35, Tenn. Acts, 1821.)

The United States Circuit Court at Knoxville and the United States Circuit Court of Appeals at Cincinnati have concurred in the finding of fact that the lands in question are in the State of North Carolina, and that the said line runs from the admitted point "County Corner" to the admitted point "Gold Bryson Gap" on said line, along the extreme heighth of what is known as the State and Jenks Ridges between said admitted points. See Tr., pp. 235 to 238 and p. 249 et seq.

The lower Courts having concurred in this finding of fact, we submit that this Honorable Court will not review the case on the facts, as there is abundance of evidence to support the decrees of the lower Courts.

ARGUMENT ON THE MERITS.

The complainants are claiming title to this land under grants from the State of Tennessee. The burden of proof is upon them to establish the charge that said land is within the boundary lines of Tennessee. The State line in question was "**run and marked**" by Commissioners appointed for that purpose by the General Assemblies of the States of Tennessee and North Carolina in the year 1821. The report of these Commissioners is not in the record, and does not seem to be in existence. This report was confirmed by Chapter 35 of the Acts of the General Assembly of the State of Tennessee for the year 1821, which is as follows:

"An Act to establish the boundary line between this State and the State of North Carolina. Passed Nov. 9, 1821.

Section 1. Be it enacted, etc., That the **dividing line run and marked** by Alexander Smith, Isaac Allen and Simeon Perry, commissioners, for and on behalf of this State; and

James Mebane, Montfort Stokes and Robert Love, commissioners for and on behalf of the State of North Carolina; which dividing line as run by said Commissioners, begins at a stone set up on the North side of Cataloochee Turnpike Road, and marked on the West side Ten. 1821, and on the East side N. C. 1821; running thence on a Southwestardly course to the Bald Rock, on the summit of the Great Iron or Smoky Mountain, and continuing Southwestwardly on the extreme height thereof to where it strikes Tennessee River about seven miles above the old Indian Town of Tallassee, crossing Powter's Gap at the distance of twenty-two miles from the beginning, passing Meig's boundary line at thirty-one and a half miles, the Equovettly path at fifty-three miles and crossing Tennessee River at the distance of sixty-five miles from the beginning; **from Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called the Unicoy, or Unaka Mountain,** striking the old trading path leading from the Valley Towns to the Overhills Towns, near the head of the west fork of Tellico River, and at the distance of ninety-three miles from the beginning, thence along the extreme height of the Unicoy or Unaka Mountain to the Southwest end thereof, at the Unicoy or Unaka Turnpike Road; where a corner stone is set up marked Tenn. on the west side and N. C. on the east side, and where a hickory tree is also marked on the South side Ten. 101 M. and on the North side N. C. 101 M., being one hundred and one miles from the beginning; from thence a due course south, two miles and two hundred and fifty-two poles to a spruce pine on the north bank of the Hiwassee River, below the mouth of Cane Creek; thence up the said river the same course, about one mile, and crossing the same to a maple marked W. D. and R. A. on the south bank of the river; thence continuing the same course due south eleven miles and two hundred and seventy-three poles to the Southern boundary line of the State of Ten-

nessee and North Carolina, making in all one hundred and sixteen miles and two hundred and twenty-three poles from the beginning; and striking the southern boundary line twenty-three poles west of a tree in said line marked 72 M. where was set up by said commissioners a square post marked on the West side Ten. 1821, and on the East side N. C. 1821, and on the South side G, **be and the same is hereby ratified, confirmed and established as the true boundary line between this State and the State of North Carolina.** See original Acts, Chap. 35.

We have emphasized that portion of the Act above quoted which has special reference to the matters in controversy. That part of the State line directly in question in this law suit is "from Tennessee River to the Main Ridge and along the extreme height of same to the place where it is called the Unicoi or Unaka Mountain." This Act **ratifies, confirms and establishes** as the true boundary line between this State and the State of North Carolina "**the dividing line run and marked**" by the Commissioners appointed for that purpose.

The Commissioners begun their survey, as stated in the Act of 1821, at the Cataloochee Turnpike Road, and they "run and marked" the State line to the Tennessee river; then "from Tennessee River to the main ridge and along the extreme height of the same to the place where it is called the Unaka or Unicoi Mountain, etc." Now it is admitted that the point marked "County Corner" on this map shown in the opinion of Judge Lurton, Tr. p. 248, is on the extreme height of the "main ridge," which is there called "State Ridge" and that the point marked "Gold Bryson Gap" is on the extreme height of the "main ridge," which is there called "Jenk's Ridge," and that both of these points are on the true State line. The Court is called upon to find and determine the location of the true State line between the admitted points "County Corner" and "Gold Bryson Gap."

The complainants claim that the true State line is, or ought to be located around the red line shown on this map. This line leaves the top of the State Ridge at "County Corner" and runs Southeast about three miles, then curves back Southwesterly, then West to the point called "Gold Bryson Gap" on the Jenk's Ridge. This line leads you 1,400 feet down the flat side of the State Ridge, with a perpendicular descent of 410 feet into the valley called Mitchell Licks, thence a quarter of a mile across Mitchell Licks to where the line begins to ascend again, thence up one tall ridge and down into a valley, over one ridge after another to Gold Bryson Gap. It is twelve miles around this line from County Corner to Gold Bryson Gap.

J. L. Fain's Depo., Tr., pp. 54 and 55.
McClelland's Depo., Tr., pp. 69, 70 and 71.
F. M. Lovingood's Depo., Tr., p. 64.
Hunsuck's Depo., Tr., p. 63.
A. A. Fain's Depo., Tr., pp. 59, 60 and 61.
Hale's Depo., Tr., pp. 42 and 43.

The defendants claim that the true State line "run and marked" by the Commissioners, and "confirmed and established" by the legislature of Tennessee in 1821, continues in a Southwesterly direction from County Corner along the extreme height of the State Ridge for about four and one-half miles to the Tellico River, thence up and along the extreme height of a ridge rising directly across the Tellico River from the State ridge, which is there called "Jenk's Ridge," to Gold Bryson Gap on said ridge. The distance between "County Corner" and "Gold Bryson Gap" along this line, which in all the evidence is spoken of as the black line, is six miles.

McClelland's Depo., Tr., pp. 69, 70 and 71.
Lovingood's Depo., Tr., pp. 64 and 65.
Hunsuck's Depo., Tr., pp. 62 and 63.
A. A. Fain's Depo., Tr., p. 59.

J. L. Fain's Depo., Tr., pp. 54 and 55.
Patton's Depo., Tr., pp. 100 and 101.
I. Lovingood's Depo., Tr., p. 106.
B. Lovingood's Depo., Tr., p. 107.
Wilson's Depo., Tr., pp. 108 and 109.
Hale's Depo., Tr., p. 36.

Complainants admit that the Commissioners did not "run and mark" the State line around the broken chain of ridges indicated by the red line. They insist, however, that while acting under the mistaken belief that the State Ridge from "County Corner" to the Tellico River and thence up and along the Jenk's Ridge to "Gold Bryson Gap" was the "main ridge," they run and marked this chain of ridges as the State line, but that they subsequently discovered their mistake, and simply called for and adopted the broken chain of ridges around the water divide as the State line, without running and marking the same.

Complainants insist further, that the Court should adopt the broken chain of ridges around the red line as the State line, because it is the water divide between the water courses running South in North Carolina and those running North into Tennessee. They insist further that the Act of 1821 does not call for crossing a water course on this part of the State line, and that if this broken chain of ridges is adopted as the true State line it will not cross any water course.

The Act of 1821 does not call for the "water divide" in any part of the State line. It is true that it does not call for crossing the Tellico River, but the fact is clearly proven in this record that at the point where the Commissioners crossed what is now known as the Tellico River in actually running and marking the State line, the so-called Tellico River is only a small branch or creek and was not such a stream as would attract attention of the Commissioners in that wild and uninhabited

mountainous country so as to suggest to them the propriety of mentioning it in their report. It is not even shown that this stream was known as the "Tellico River" at that time.

Patton's Depo., Tr., pp. 100 and 101.
Wilson's Depo., Tr., pp. 108 and 109.
Lovingood's Depo., Tr., p. 105.

It is also true that the complainants witnesses, Payne and Miller, testify that they had conversations with two very old men, one of whom claimed to have been on the State line survey, and that these old men stated to them that the Commissioners run down the State Ridge by mistake, but when they subsequently discovered their mistake they did not go back and mark the line around the "water divide," but "made a plat or call around the heights of the mountain—the water shed." One witness also testified that the same party stated that he was sent back to mark out the State line marks down the State ridge, and to mark the line around the "water divide," and that he did in fact mark out a part of the State line marks on the State Ridge and marked the line around the water divide for some distance.

Miller's Depo., Tr., pp. 94 to 96.
John Miller's Depo., Tr., pp. 97 and 98.
Payne's Depo., Tr., pp. 89 to 91.

When the Commissioners reached the point called "County Corner" in running and marking the State line they were going in a Southwesterly direction, and "Gold Bryson Gap" is six miles southwest from County Corner. The Act of 1821 does not in fact contain any call "around the heights of the mountain—the water shed," as stated by these witnesses. This line around "the water shed" runs southeast for about four miles, a course almost at right angles with the course that the Commissioners had been running up to that time, and there is no such call in

the Act of 1821. **The proof conclusively shows that there are no defacing marks on the State ridge, and that the line around the "water shed" is not marked at all.** So that the information given to these witnesses was clearly erroneous.

McClelland's Depo., Tr., p. 71.
Lovingood's Depo., Tr., pp. 65, 66 and 105.
Fain's Depo., Tr., p. 50.
Hale's Depo., Tr., p. 39.

As has already been stated, it is conceded in this record that the point marked "County Corner" on the State Ridge, and the point marked "Gold Bryson Gap" on the Jenk's Ridge are both on the true state line. The defendants insist that this mountain range called State Ridge on the East side of Tellico River and Jenk's Ridge on the West side of Tellico River is the main ridge called for in the Act of 1821, **and that the Commissioners appointed for that purpose actually run and marked the State line on this chain of ridges.**

In seeking the truth about this matter it must be remembered that the Act of 1821 of the General Assembly of the State of Tennessee provides: "That the dividing line run and marked" by the Commissioners of the States of Tennessee and North Carolina, "from the Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called 'Unicoi' or 'Unaka Mountain' * * * * be and the same is hereby ratified, confirmed and established as the true boundary line between this State and the State of North Carolina." Hence the line that was "run and marked" by the Commissioners, is the line that was "confirmed and established" by the Legislature of the State of Tennessee as the true boundary line. It must also be remembered that when the Commissioners of the States of Tennessee and North Carolina run and marked this line in 1821, there were no settlements in this wilderness of mountains, and the Commissioners were

running and marking the line on what they conceived to be the "main ridge." The Commissioners began this survey, as is shown by the Act of 1821, at the Cataloochee Turnpike Road, and ran it in a southwesterly direction until they reached the admitted point called "County Corner." All of the witnesses testify that standing at "County Corner" and looking southwesterly for the "main ridge" any observer would inevitably adopt the "State Ridge" as the "Main Ridge."

Hale's Depo., Tr., pp. 38 and 39.
Fain's Depo., Tr., pp. 53 and 54.
Hunsuck's Depo., Tr., pp. 62 and 63.
McClelland's Depo., Tr., pp. 69 and 70.
Lovingood's Depo., Tr., pp. 64 and 65.
A. A. Fain's Depo., Tr., pp. 60 and 61.
Wilson's Depo., Tr., pp. 108 and 109.

This State Ridge continues in a southwesterly direction from County Corner for about 4½ miles to the Tellico River, and thence up Jenk's Ridge to "Gold Bryson Gap." This range of ridges is quite as high as the broken chain of ridges around the red line, which the complainants claim to be the true State line. All of the witnesses except the complainants two witnesses, Hale and Waller, say that the State Ridge to Tellico River and the Jenk's Ridge rising directly opposite the State Ridge on the West side of the Tellico River to Gold Bryson Gap, is the main ridge in that vicinity. Hale and Waller admit that there is no spur to lead the Commissioners off of the State Ridge at County Corner and around the broken chain of ridges shown by the red line, and that in order to adopt this chain of broken ridges as the "main ridge" they would have to make a sheer descent into the valley called Mitchell Licks in order to get on the other chain of ridges. The only reason that Hale and Waller can assign for their opinion to the effect that this chain of broken ridges around the red line is the main ridge, is the

fact that it is the water divide between the streams flowing south in North Carolina, and those flowing North into Tennessee.

McClelland's Depo., Tr., pp. 68 to 71.
F. M. Lovingood's Depo., Tr., pp. 64, 65 and 105.
Hunsuck's Depo., Tr., pp. 62 and 63.
A. A. Fain's Depo., Tr., pp. 59, 60 and 61.
J. L. Fain's Depo., Tr., pp. 53 and 54.
Patton's Depo., Tr., pp. 101 and 102.
I. Lovingood's Depo., Tr., p. 106.
B. Lovingood's Depo., Tr., p. 107.
Wilson's Depo., Tr., pp. 108 and 109.
Hale's Depo., Tr., pp. 36, 37, 38 and 39.

As shown above there are two ranges of ridges between County Corner and Gold Bryson Gap, and the distance between these points along the State Ridge line is only six miles, while the distance around the other range of ridges is twelve miles.

The fact that the State Ridge from County Corner to Tellico River and the Jenk's Ridge from the Tellico River to Gold Bryson Gap is the main ridge between these two admitted points on the State line is overwhelmingly established by the testimony in this record. It was manifestly the province of the Commissioners to determine and decide which was the main ridge. They did so decide and actually run and marked the State line on the extreme height of the State ridge to Tellico River, and thence up and along the Jenk's Ridge to Gold Bryson Gap, and then to and along the Unaka Mountains to the Unaka Turnpike. This line is plainly marked with State line marks, and some of the trees containing these marks were "juggled" or "blocked" by the witnesses, and the annular growth of the trees from which these juggles were taken shows clearly that this line was marked with State line marks in the year 1821. The State ridge has gone by that name ever since

the year 1821 because of the fact that the Commissioners did run and mark the State line on it.

McClelland's Depo., Tr., pp. 69, 70, 71 and 72.
F. M. Lovingood's Depo., Tr., pp. 64, 65, 66, 104 and 105.
J. L. Fain's Depo., Tr., pp. 50, 51, 52, 53, 54 and 103.
A. A. Fain's Depo., Tr., pp. 58, 59, 60 and 61.
E. R. Hunsucker's Depo., Tr., pp. 62 and 63.
Patton's Depo., Tr., pp. 100, 101 and 102.
Isaac Lovingood's Depo., Tr. p. 106.
B. F. Lovingood's Depo., Tr., p. 107.
Wilson's Depo., Tr., pp. 108 and 109.
Watson's Depo., Tr., pp. 45 and 46.

There is a holly tree standing about 200 yards west of the Tellico River on the State Ridge line which is plainly marked "86 M." These marks are very old and have the appearance of being as old as those that were "juggled" and which show by their annual growth that they were marked with State line marks in the year 1821. By actual measurement this holly stands 86 miles from the beginning point called for in the Act of 1821 at the Cataloochee Turnpike road.

The Act of 1821 establishing the line between the States of Tennessee and North Carolina fixes the distance from the beginning point at the Cataloochee Turnpike Road to the Unaka Turnpike at the Southwest end of the Unaka Mountains at 101 miles. All of the witnesses agree that the distance from the Cataloochee Turnpike Road along the State ridge line by actual measurement to the 101 mile post is 100 miles and six-tenths. On the other hand, if you adopt the course along the broken chain of ridges indicated by the red line on the map, that being the line insisted upon by the complainants, the distance by actual measurement from the Cataloochee Turnpike

Road to the 101 mile post is 106 miles, or about five miles too much.

McClelland's Depo., Tr., pp. 70, 71 and 72.
Hale's Depo., Tr., pp. 43 and 44.
J. L. Fain's Depo., Tr., pp. 51 and 52.
Patton's Depo., Tr., pp. 100 and 101.
Lovingood's Depo., Tr., pp. 64 and 65.

A number of witnesses testify to conversations had with very old men who were on the State line survey with the Commissioners. These old men stated to the witnesses that the true line between the States of Tennessee and North Carolina was run and markd by the Commissioners in 1821 on the top of the State ridge to the Tellico River, thence up the Jenk's Ridge to Gold Bryson Gap. They even remembered the fact that this holly stood 86 miles from the Cataloochee Turnpike road.

Watson's Depo., Tr., pp. 45 and 46.
E. R. Hunsucker's Depo., Tr., pp. 62 and 63.
Patton's Depo., Tr., pp. 100, 101 and 102.
B. F. Lovingood's Depo., Tr., p. 107.
Isaac Lovingood's Depo., Tr., p. 106.

It will thus be seen that the line running from Laurel Top on the extreme height of the State Ridge in a southwesterly course to County Corner, and continuing along the State Ridge in a southwesterly course to Tellico River, and thence up and along the Jenk's Ridge to Gold Bryson Gap, and thence to the 101 mile post has all of the following facts to support the claim of defendants—that it is the true State line, to-wit:

(1)—It runs the general course called for in the Act of 1821 upon the extreme height of the main ridge between the admitted points "County Corner" and "Gold Bryson Gap."

(2)—By following this line, we get the approximate distance

called for in the Act of 1821, between the Cataloochee Turnpike Road and the Unaka Turnpike.

(3)—It is plainly marked with State line marks, and the juggles taken from some of these marked trees show that it was marked in the year 1821. There is no other marked line between the admitted points on the State line called "County Corner" and "Gold Bryson Gap."

(4)—This line has always been known as the State line by the oldest inhabitants who know anything about the matter, and the ridge upon which it runs is known as the "State Ridge," because the Commissioners run and located the State line on it.

From all of these facts it can not be doubted that the Commissioners of the States of Tennessee and North Carolina, believing that the State Ridge to the Tellico River and the Jenk's Ridge to Gold Bryson Gap and thence to the Unaka Mountains was the main ridge, "run and marked" the State line along the extreme height of this range of ridges. The Legislature of the State of Tennessee ratified, confirmed and established as the true boundary line between this State and the State of North Carolina, the line thus run and marked by said Commissioners.

We submit, therefore, that there is no error in the decree of the lower Court, and that it should be affirmed.

JOHN W. GREEN,
Solicitor for Appellees.

SAMUEL G. SHIELDS,
Of Counsel.

Supreme Court of the United States.

No. 8.—October Term, 1904.

Hugh Stevenson, Matilda C. Alloway, Paul E. Stevenson et al., Appellants, vs. William Fain, John Fain, Robert Fain et al. } Appeal from the United States Circuit Court of Appeals for the Sixth Circuit.

[November 7, 1904.]

This was a bill filed by Stevenson and others, citizens and residents of New York and Rhode Island, against Fain and others, citizens and residents of North Carolina and Georgia, in the Circuit Court of the United States for the Eastern District of Tennessee, to remove a cloud upon the title to a body of wild lands lying adjacent to the boundary between Tennessee and North Carolina.

Complainants claimed title under grants from the State of Tennessee, and alleged that the lands lay wholly in Monroe County, Tennessee. Defendants alleged that the lands lay wholly within the county of Cherokee, in the State of North Carolina, and that they were lawfully granted to their ancestor by that State.

The issue involved the true boundary line between North Carolina and Tennessee. The Circuit Court held that the lands lay in the State of North Carolina, and that the title was in defendants, and dismissed the bill.

Thereupon an appeal was taken to the Circuit Court of Appeals for the Sixth Circuit and, on hearing, the decree of the Circuit Court was affirmed. 116 Fed. Rep. 147.

From the decree of the Circuit Court of Appeals this appeal was prosecuted.

Mr. Chief Justice Fuller delivered the opinion of the Court:

If the jurisdiction of the Circuit Court was dependent entirely on diversity of citizenship, the decree of the Circuit Court of Appeals was final, and this appeal cannot be maintained. The contention of appellants is that it was not so dependent because jurisdiction also existed in that the parties claimed under grants from different States, to which it is replied that under the Constitution and laws the Circuit Courts are not vested with jurisdiction on that ground except when the parties are citizens of the same State.

By section 1 of article III of the Constitution it is provided that: "The judicial power of the United States shall be vested in one Supreme Court,

and in such inferior courts as the Congress may from time to time ordain and establish." And by section 2 that: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

The Supreme Court alone "possesses jurisdiction derived immediately from the Constitution, and of which the legislative power cannot deprive it," *United States* v. *Hudson*, 7 Cranch, 32, but the jurisdiction of the Circuit Courts depends upon some act of Congress. *Turner* v. *Bank*, 4 Dall. 8, 10; *McIntire* v. *Wood*, 7 Cranch, 504, 506.

The use of the word "controversies" as in contradistinction to the word "cases," and the omission of the word "all" in respect of controversies, left it to Congress to define the controversies over which the courts it was empowered to ordain and establish might exercise jurisdiction, and the manner in which it was to be done.

By the eleventh section of the Judiciary Act of September 24, 1789, it was provided that the Circuit Courts of the United States should "have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs or petitioners; or an alien is a party, or the suit is between a citizen of a State where the suit is brought and a citizen of another State."

In *Bank* v. *Deveaux*, 5 Cranch, 61, 85, Mr. Chief Justice Marshall said:

"The judicial power of the United States, as defined in the Constitution, is dependent, 1st, On the nature of the case; and 2d, On the character of the parties. By the judicial act, the jurisdiction of the Circuit Court is extended to cases where the constitutional right to plead and be impleaded, in the courts of the Union, depends on the character of the parties; but where that right depends on the nature of the case, the Circuit Courts derive no jurisdiction from that act, except in the single case of a controversy between citizens of the same State, claiming lands under grants from different States."

And that jurisdiction was conferred by the twelfth section of the act, which provided that "if in any action commenced in a State court, the title of land is concerned, and the parties are citizens of the same State," either party might remove the cause to the Circuit Court on the fact being made to appear that the parties claimed under grants of different States. This section was carried forward as section 647 of the Revised Statutes and reappears in substance in section 3 of the act of March 3, 1875. 18 Stat. 470, c. 137.

By the first section of the latter act original jurisdiction was given to the Circuit Courts of cases, among others, "arising under the Constitution or laws of the United States, or treaties," or in which there was "a controversy between citizens of the same State claiming lands under grants of different States."

The acts of March 3, 1887, (24 Stat. 552, c. 373,) and of August 13, 1888, (25 Stat. 433, c. 866,) are to the same purport.

Two cases arising under the Judiciary Act of 1789 are cited, *Town of Pawlet* v. *Clark et al.*, 9 Cranch, 292, decided March 10, 1815, and *Colson et al.* v. *Lewis*, 2 Wheat. 377, decided March 14, 1817.

In *Pawlet* v. *Clark*, it appeared that the parties were citizens of Vermont and that the cases were pending in the Circuit Court for the District of Vermont, but the reporter's statement does not show that the case was commenced in the State court. The record on file in this court, however, discloses that such was the fact, and that the cause was removed into the Circuit Court under the twelfth section.

Colson et al. v. *Lewis* is not well reported. It was a bill in equity in which Lewis and others were complainants and Rawleigh Colson was the sole defendant. It came here on certificate, and the title was Lewis and others against Colson, and not as given in the report. The case stated shows that the case was removed from the State court into the Circuit Court of Kentucky, and that the complainants were citizens of Virginia, but the citizenship of defendant was not disclosed. The headnote asserts that the parties were citizens of Kentucky. But the certificate of the clerk, as appears from our files, sets forth "that it is stated in the bill that the deft. Rawleigh Colson is a citizen of the State of Virginia."

In both cases the parties were citizens of the same State and the cases were originally commenced in the State courts, and the Circuit Courts acquired jurisdiction by removal. The Judiciary Act of 1789 vested the Circuit Courts with original jurisdiction on the ground of diversity of citizenship, but not where title was claimed under grants of different States. Congress manifestly accepted the letter of the Constitution and as the judicial power extended to controversies where citizens of the same State claimed title under grants of different States, assumed that cases presenting such

controversies would be commenced in the State courts, and provided that those cases might be removed when that fact was made to appear. The particular constitutional provision was treated as not open to a construction which would make it embrace citizens of different States. Naturally enough, as the reason for the extension of the Federal judicial power to controversies between citizens of different States, and to controversies between citizens of the same State claiming lands under grants of different States, was in substance the same. 2 Story Const. § 1696.

And when the act of 1875 enlarged the original jurisdiction, no view to the contrary was indicated.

Ayres v. *Polsdorfer*, 187 U. S. 585, was an action of ejectment brought in the Circuit Court by citizens of one State against those of another, and the case, having gone to judgment, was carried to the Circuit Court of Appeals, and the judgment affirmed. A writ of error from this court was then sought to be sustained because, as was contended, the evidence disclosed, though the pleadings did not, that the parties claimed under grants of different States. But we held that if the emergence of such a question might have justified taking the case directly to this court, having gone to the Court of Appeals, it could not after judgment then be brought here.

As Congress has not conferred jurisdiction on the Circuit Courts over controversies between citizens of different States because, apart from diversity of citizenship, they may have claimed title by grants from different States, even if it had power to do so, which is not conceded, the result is that the appeal must be

Dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.